

AFTER FINAL
WITNESS
DISCUSSING
JURY
CHARGE

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1 THE COURT: All right. We'll get -- till we get
2 something from the their group, I'm trying to think of the case
3 that I had this problem in, and I think it would be -- there is
4 a better charge that goes into fungibility and, therefore, the
5 fact that you don't need to trace funds to show that they were
6 the actual funds that the government used.

7 MR. RUBINSTEIN: But I think there has to be a
8 distinction between a case that is charged under 666(a)(2), as
9 opposed to -- you look at the statute, (a)(2) relates to
10 corruptly gives -- officer agrees to give anything of value
11 person with intent to influence or reward. So I understand
12 why -- that was what my argument was about good money and bad
13 money, why there shouldn't be a traceability, if you give
14 somebody a bribe and that's the money that you're talking about
15 using.

16 But here we're not talking about (a)(2) money. We're
17 talking -- we're not talking about (a)(2). So the courts have
18 never addressed whether or not there's traceability. And
19 there's nothing -- as I said, the bribe money is difficult to
20 trace because it's fungible.

21 Here we're not talking about bribe money. We're
22 talking about grant money, which you can trace. And I'm not
23 asking for a charge that says that they have to trace the
24 money. I'm just saying that it's misleading to suggest that
25 they can't consider -- the jury can't consider which monies it

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1 was.

2 MR. EVERDELL: That's ridiculous, your Honor.

3 MR. RUBINSTEIN: The Government's argument, as Mr.
4 Kwok said, is that there is no tracing problem because there's
5 only one pot; all that money comes from one source, that being
6 the grant. Therefore, any monies spent are grant money. So I
7 don't know why they would want -- why they need any sort of
8 tracing language in the charge at all.

9 MR. EVERDELL: Because that's case law, your Honor,
10 and that is the case in every Circuit. The cases talk about
11 and in Sand as well, by enacting -- this is the ninth Circuit
12 case Stevens, by enacting Section 666, the general statute, not
13 any particular subsection, Congress plainly decided to protect
14 federal funds by preserving the integrity the entities that
15 received the federal funds rather than requiring the tracing of
16 federal funds to a particular illegal transaction.

17 So this is not -- this applies to the entire statute.
18 Now, the fact that we may not have a particular issue in this
19 case, because of the funds were ATP funds, doesn't matter. The
20 jury should still be instructed on the appropriate law, which
21 is that there is no tracing requirement with this statute. And
22 the statute was specifically enacted to avoid commingling
23 problem that other statutes presented.

24 MR. KWOK: And, your Honor, if I may, I mean the
25 charge we cite in our request to charge, and that's now

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1 reflected in the long version of the fifth element is directly
2 lifted from Sand, the model jury instructions. It's not lifted
3 from (a)(2). It's lifted from the statute that we charge. So
4 I don't know what Mr. Rubinstein's talking about when he refers
5 to his on the spot research.

6 (Pause)

7 MR. RUBINSTEIN: Judge, I'd only point out --

8 THE COURT: I'll have to think about it, Mr -- I'll
9 have to think about it.

10 MR. RUBINSTEIN: Judge, there is another case --

11 THE COURT: Your point, as I see it, is that, okay,
12 it's true that Sand says that, but that applies to an
13 embezzlement case, but it may not apply to misapplication case.

14 MR. RUBINSTEIN: And I would suggest --

15 THE COURT: It seems to be taken from Solantz, which
16 is an embezzlement case, so let me look at it and see if can --

17 MR. RUBINSTEIN: Judge, I hope that this case that I'm
18 going to mention to the Court.

19 THE COURT: -- satisfy myself that there's nothing to
20 your point, but I'll have to -- I'll have to look at it.

21 MR. RUBINSTEIN: Judge --

22 THE COURT: You've got a Rule 29 motion.

23 MR. RUBINSTEIN: Yes. I just wanted to add an
24 additional case that I hope is helpful to the Court, and it's
25 the Second circuit case, it's U.S. versus Thompson, and it's

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1 cited at 484 Fed. 3d, it's 877. And I just -- it's not on all
2 fours, but I think it gives the sense of what we're talking
3 about here. So I know your Honor will take a, more than just a
4 casual look at it.

5 MR. EVERDELL: Your Honor --

6 MR. RUBINSTEIN: As far as -- I'm sorry.

7 MR. EVERDELL: And, your Honor, if I could also direct
8 your attention to the cases in, of our letter in particularly
9 United States V. Neiman, 211 F.3d 40, which I haven't looked at
10 it recently, but although when I wrote the letter, but I seemed
11 to recall that was an (a)(1)(a) case and had some language
12 about traceability, Second Circuit case.

13 THE COURT: My -- it's a not-for-profit part that is
14 what I'm -- the not-for-profit agency as opposed to -- CASI
15 would --

16 MR. KWOK: It is a profit.

17 MR. RUBINSTEIN: For profit.

18 THE COURT: For profit.

19 MR. RUBINSTEIN: CASI was a for profit.

20 THE COURT: Well, the application to a for profit
21 organization controlled by the defendant is what is different
22 than an embezzlement situation and, therefore, I want to just,
23 if there are any cases on that, I'd be interested.

24 MR. EVERDELL: Your Honor, I think --

25 THE COURT: You seem to have a different legal

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1 structure that you're examining in the context of the statute.

2 MR. EVERDELL: Yes, your Honor. I think that the
3 Nieman case may be instructive. If I recall it, I think it
4 involves an organization that received funds and that were
5 misapplied elsewhere and there wasn't the only source of
6 funding that the --

7 THE COURT: That's where we want.

8 MR. EVERDELL: Yeah.

9 MR. RUBINSTEIN: Judge, would you hear me on Rule 29,
10 your Honor?

11 THE COURT: Yes, sir, right away.

12 MR. RUBINSTEIN: Thank you.

13 I think, your Honor, after you've heard all the
14 evidence here, I think it's clear that Dr. Karron had no intent
15 to spend grant monies inappropriately. The system in place
16 permitted review of all expenditures; not only permitted it, it
17 actually encouraged it. And the testimony is clear that when
18 the government is trying to try this case, you had a budget and
19 the budget is your Bible. When, in fact, in science, ATP
20 knows, and everybody, any reasonable person knows that as you
21 start -- as you work on the project, you realize you have
22 different priorities, so that that's why you have to write to
23 change the budget around to do it without any approval
24 whatsoever of the 10 percent, which is really 20 percent
25 because it's down and up, as Mr. Benedict said. And that is

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1 why you have a right to revise the budget after the first year.
2 You could go back and change it all. And so when you have that
3 in mind, and you understand that, and this is stuff that you
4 could negotiate. And even we have evidence that money is
5 carried forward to the next year on occasion, it tells the
6 recipient one thing; as long as you're using the money to
7 advance the project, use it and we'll talk about it.

8 Even in this case, we even have evidence where nothing
9 clearer than utilities, where there's evidence that that's an
10 indirect cost, that there was e-mails back and forth with ATP
11 suggesting that ATP would absorb the difference in the
12 utilities expenditures over what it had been in the past. Why
13 else would they be asking for bills to show the difference in
14 the expenditure?

15 So -- and the CFR says that they judge these things on
16 a case-by-case basis. And nowhere -- when you take that,
17 together with the fact that there's evidence here that Dr.
18 Karron having repairs to his -- having work done, construction
19 work done in his home, paid for work done in the kitchen with a
20 personal check, work done in the living room with a CASH check,
21 that that shows the intent. The fact that the government could
22 point to things that might have been a mistake or might have
23 been items that a blind bookkeeper would reallocate? Their
24 argument is that because he resisted, Dr. K resisted the
25 opinions of people like Benedict and Springs, and maybe even

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1 Hayes, that, therefore, he misappropriated funds.

2 I submit to your Honor that that doesn't show
3 intention at all. As a matter of fact, the conversations were
4 from Benedict; well, if I owe them money, I have a rich mother,
5 I'll pay them back.

6 So that all goes to the issue of intent, which I think
7 that the government has woefully failed to establish in this
8 case, without getting into the nitty-gritty about what money
9 was spent, where nobody is contesting that there was work done
10 on the grant. And so the main areas are rent, which your Honor
11 may recall most of the rent was back due rent. So, technically
12 speaking, that was not rent attributable to the grant period.
13 So, therefore, it shouldn't be considered as a violation of
14 taking an indirect amount. Because it was for 2000 and 2001
15 pre-grant, most of the money.

16 And additionally, the defendant had a right to move
17 10 percent increase in salary, which would've moved his salary
18 up by \$80,000 to \$255,000, and he could absorb it on that
19 level. So that's even without getting approval, to have a
20 budget, a budget change.

21 So it just seems to me, your Honor, that all the
22 evidence here, there is no, no proof that Dr. Karron intended
23 to do anything to the contrary. We have receipts. He scanned
24 every document. He had back up for every document. You know,
25 they opened that he made changes in the computer. But what did

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1 he change, how you classify an expense? He never changed an
2 invoice, he never changed a check. He never looked to delete
3 anything. And we have uncontroverted evidence here from the
4 Government's own witness that Dr. Karron is an incompetent
5 manager. He stands up at the CASI -- at a government meeting
6 dealing with grants and says, I need help with financial
7 guidance about a grant, all right. Everybody testified that in
8 the early part of the grant, Dr. Karron was taking care of the
9 books. And what is the -- the indisputed testimony? That the
10 books were in horrific conditions when the Jackson Group and
11 Springs came aboard, and they had to redo the entire, the
12 entire books.

13 The one thing that was consistent was that we had
14 checks, every check that was written there was an invoice for.
15 So I submit to your Honor that there's absolutely no basis to
16 consider that Dr. Karron intended to do anything wrong, and
17 that their whole theory of this case is misguided.

18 THE COURT: Well, the problem is that generally the
19 issue of criminal intent is an issue for the jury, and if
20 there's any basis for the jury to draw such a conclusion, I've
21 got to leave it to the jury.

22 Here, the grant was made a few weeks after they
23 attended a kickoff meeting. I gather the money came in a few
24 weeks after they attended the kickoff meeting, what's called a
25 kickoff meeting. And at the kickoff meeting there were certain

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1 exhibits and rules that were laid down to the recipient. And
2 the terms, the standard terms and conditions were set forth.
3 And they had a slide show to advise the recipients of the
4 nature of the agreement so that those people who were less than
5 avid of terms of conditions would be alerted to the necessary
6 items.

7 And as I understood the testimony, that they were
8 not -- they were not to spend any money for rent and utilities.
9 And I thought that appeared on one of the slides -- and I may
10 be wrong. And that then they had to get prior approvals for
11 certain types of expenditures.

12 Well, the first thing that happens is that the money
13 comes in -- I've forgotten whether it was \$150,000 or something
14 like that. The defendant takes that check -- takes that money,
15 deposits it in CASI, then draws himself a check for 75,000 and
16 then proceeds to --

17 MR. RUBINSTEIN: Judge --

18 THE COURT: -- draw other checks in payment of the
19 back rent.

20 MR. RUBINSTEIN: Judge, your time line --

21 THE COURT: For some, for some \$36,000.

22 MR. RUBINSTEIN: The time line is off, Judge.

23 THE COURT: What?

24 MR. RUBINSTEIN: Your time line is off. The money --

25 THE COURT: Time line is off?

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1 MR. RUBINSTEIN: Yes. The money came in in October, I
2 think October 25th.

3 THE COURT: Right.

4 MR. RUBINSTEIN: The kickoff and the money was
5 withdrawn --

6 THE COURT: The kickoff --

7 MR. RUBINSTEIN: Was August, was November 8th, 2001.
8 So the money was withdrawn prior to the time of the kickoff,
9 so --

10 THE COURT: Well --

11 MR. RUBINSTEIN: That's my recollection --

12 THE COURT: I don't know. But --

13 MR. RUBINSTEIN: -- of the evidence.

14 THE COURT: You may be right. My recollection was
15 that the kickoff was in October, but I may be wrong. And I
16 notice that the last witness indicated that the kickoff was in
17 October where he met Dr. Karron.

18 MR. RUBINSTEIN: He wasn't at the kickoff, Judge.
19 Benedict was not at the kickoff. He testified that he was
20 not -- he was not aboard. He said he was at a conference where
21 he met -- that's when he met Dr. Karron.

22 THE COURT: Well, I thought he said at one point he
23 was at a conference, but then he called it kickoff also. I may
24 be wrong.

25 MR. RUBINSTEIN: The testimony is that the people at

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1 the kickoff, besides the ATP people, were Dr. Karron, Gurfein
2 and somebody whose name starts with an S, Dr. Satava.

3 THE COURT: Well, the point I'm making is that soon --
4 I believe they may have had such a meeting. I'd have to go
5 back to my notes and look at it. I will go back to them.
6 Exhibit 2 mentions a kickoff. I don't seem to have a date.

7 Then I believe that that was all before the money was
8 sent, but after the award was announced, and then the money
9 comes in and these payments were made out. But I'd have to go
10 back to the actual record. There was another meeting in
11 November.

12 MR. EVERDELL: Your Honor, regardless --

13 THE COURT: It was testified to where he discussed
14 changes in the equipment budget. Those are just my notes. I
15 may be wrong.

16 So, I mean they could draw an inference from that, it
17 seems to me, that he deliberately decided not to abide by the
18 agreement, for reasons of his own, or by the grant terms
19 agreements of its own and without getting -- and without
20 getting any prior approval, and that's enough for a jury to
21 determine that he was acting intentionally and knowingly.

22 Let me see if maybe the dates will be in your
23 cross-examination.

24 MR. KWOK: Your Honor, if I may, I think if I recall
25 the testimony correctly, I think Mr. Rubinstein is right, in

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1 that the kickoff meeting in this case happened after the funds
2 were made available.

3 THE COURT: All right.

4 MR. KWOK: But in the end it doesn't matter, because I
5 think there's testimony also that these conversations about
6 rent and utilities happened at the proposers meeting, even
7 before the kickoff meeting, Lee Gerfein and Dr. Karron called
8 Hope Snowden to talk about rent. And so when Ms. Snowden went
9 to the kickoff meeting, the same conversations happened and --

10 THE COURT: What about this Ms. Lide, Betti whatever
11 her name was, Betti --

12 MR. KWOK: Betti Joyce Lide. She also testified that
13 she spoke to the defendant and the defendant's business manager
14 about the same topic.

15 THE COURT: When?

16 MR. KWOK: Of rent.

17 THE COURT: When?

18 MR. KWOK: Rent, exactly correct. When? I believe
19 she testified that it was at the end of 2001.

20 THE COURT: When?

21 MR. EVERDELL: I believe she testified -- I believe
22 she testified it was sometime in 2001. I don't know --

23 THE COURT: Sometime in 2001?

24 MR. EVERDELL: I'd have to check that.

25 THE COURT: Before the grant?

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1 MR. EVERDELL: Your Honor, the conversations that I
2 think are particularly relevant here are the ones with Hope
3 Snowden, who testified particularly that even before the grant
4 was awarded that she had conversations with the defendant and
5 Lee Gerfein about rent and not being allowed allowable, and
6 again had conversations with them after the grant was awarded
7 and at the kickoff meeting, and all these conversations
8 happened before these funds were drawn down, and rents started
9 to get paid with funds. So he was on notice.

10 THE COURT: It wasn't at the kickoff meeting, but
11 there was another meeting, is that your --

12 MR. EVERDELL: There is a proposers meeting before the
13 kickoff meeting, when people who want to write proposals for
14 the CASI grant -- sorry -- for the ATP grant go and they get
15 educated on what the rules are, and that happened well before
16 the grant was awarded.

17 THE COURT: I guess I'm talking about the proposers.

18 MR. EVERDELL: I think so.

19 MR. RUBINSTEIN: I don't think Snowden was -- my
20 recollection Ms. Snowden wasn't at --

21 THE COURT: I didn't think.

22 MR. RUBINSTEIN: That --

23 THE COURT: I don't think she was at it. I thought
24 only Lide and some other women were at it.

25 MR. EVERDELL: That's right. I don't think -- I don't

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1 think Ms. Snowden -- well, I don't think there's testimony Ms.
2 Snowden was at the proposers meeting, but she had conversations
3 with the defendant himself and with doctor --

4 THE COURT: No, but those are -- I mean, you can fix
5 dates, but you have this problem of acting knowingly and
6 intentionally in violation of the grant terms.

7 MR. EVERDELL: That's right.

8 THE COURT: That's a problem.

9 MR. EVERDELL: And the conversation was can we use
10 rent -- or can we use ATP funds to pay for rent an. She said
11 absolutely not.

12 THE COURT: If the horse was already out of the barn,
13 it doesn't go to intent.

14 MR. EVERDELL: The horse wasn't already out of the
15 barn. These conversations happened before the grant funds
16 started getting drawn down and before the rent payment were
17 getting paid.

18 THE COURT: I don't know whether they did or didn't,
19 at this point.

20 MR. EVERDELL: Her testimony was that it happened
21 before the grant was even awarded, and the first drawdown is, I
22 believe --

23 THE COURT: That was my recollection, but --

24 MR. RUBINSTEIN: That can't possibly be, your Honor,
25 because they testified that this was -- Snowden particularly --

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1 that nobody would know that they had the grant until they
2 received official notification and, therefore -- so the
3 government is, I submit, is a little -- is inaccurate.

4 MR. EVERDELL: It doesn't prevent them from calling.

5 THE COURT: I haven't got any citation to the evidence
6 before me. No one provided me with that. And --

7 MR. EVERDELL: It's also -- your Honor, the testimony
8 of Hope Snowden is that she had numerous conversations with the
9 defendant and Lee Gerfein remember between the time that the
10 grant was awarded and the day of the kickoff meeting about rent
11 utilities. The first drawdown funds, I believe, was
12 October 26. The grant awarded on 4th of October, backdated
13 effective as of October 1st, but she had these conversations
14 with the defendant before the fund are even drawn down. And
15 plus the fact --

16 THE COURT: Where is that in the record?

17 MR. EVERDELL: It's 254 to 259 and 303 to 04. And,
18 your Honor, adding to that, is that these rent checks --

19 THE COURT: I've got to find a date. Where is the
20 date?

21 MR. EVERDELL: I think it should be on 254 to 259,
22 those pages.

23 THE COURT: 254?

24 MR. EVERDELL: Of the transcript.

25 THE COURT: I have the wrong book. I asked for dates.

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1 That -- 254 is the day of the kickoff meeting, which is in
2 November.

3 MR. EVERDELL: And I believe the question was
4 something like, do you have any conversations before the
5 kickoff meeting with --

6 THE COURT: Well, where is that?

7 MR. EVERDELL: I think it's in one --

8 THE COURT: Wait a minute. I got something prior
9 to -- yes, yes. Let me see. 254.

10 MR. EVERDELL: Through 259 and 303.

11 THE COURT: Just a second let me --

12 MR. EVERDELL: Yes, your Honor.

13 (Pause)

14 THE COURT: It doesn't give a date. It doesn't give a
15 date. I can't find any date in there.

16 MR. EVERDELL: Your Honor, I don't know if Ms. Snowden
17 remembered the exact date when she had the conversations, but
18 she said --

19 THE COURT: But it doesn't have any date, any
20 reference date in that page.

21 MR. EVERDELL: Your Honor, I think the timeframe we're
22 talking about here --

23 THE COURT: Wait a minute, wait a minute. I think I
24 may have found one on 257.

25 MR. EVERDELL: Okay.

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1 THE COURT: In October. This is right after he was
2 told that he received the documents that he would be receiving
3 this federal fund.

4 MR. EVERDELL: Right.

5 THE COURT: Then it continued.

6 MR. EVERDELL: Which is the grant's awarded on --

7 THE COURT: That conversation -- let me just see who
8 this is with. This does seem to be with the defendant. I
9 think there was mention of Gurfein there in the question. And
10 that does involve rent and utilities.

11 MR. EVERDELL: That's correct, your Honor. So she's
12 having conversations, actually multiple conversations with both
13 the defendant and Lee Gerfein before the funds are being drawn
14 down in October of 2001, telling him specifically you can't use
15 ATP funds to pay for rent, utilities.

16 And furthermore, your Honor, if you look at the spread
17 sheets, these rent payments were paid out over the course of
18 several months, even after the initial drawdown. So these
19 conversation he's having with --

20 THE COURT: 258 is the discussion. I thought there
21 was something from Ms. Lide also.

22 Well, that seems to cover the rent and utility, and
23 that seems to raise the issue of the defendant's intent, so I
24 have to deny the motion. That's what I got to do.

25 All right, anything further? No word on --

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1 MR. EVERDELL: No, your Honor. The appeals
2 division -- sorry, your Honor. The appeals division wasn't
3 able to find anything applicable, so I think we'll just stay
4 with what we have.

5 THE COURT: All right. I might come up with
6 something. I'll look at a few things. I want to look at Mr.
7 Rubinstein's case that he referred me to. And you referred me
8 to U.S. versus Thompson.

9 MR. EVERDELL: I referred you to U.S. versus Nieman.

10 THE COURT: Nieman, 211 Fed. 3d. He wants me to look
11 at U.S. versus Thompson.

12 MR. EVERDELL: Correct. Mine's 211 F.3d, 40.

13 THE COURT: Yeah, I've got that.

14 MR. EVERDELL: Thank you, your Honor.

15 THE COURT: Okay.

16 MR. RUBINSTEIN: Thank you very much, your Honor.

17 MR. KWOK: Thank you, your Honor.

18 THE COURT: All right, work hard on your summation.

19 MR. EVERDELL: I will, your Honor.

20 MR. KWOK: Certainly, your Honor.

21 THE COURT: Work hard on your summations all night.
22 Be here at 9:30 in the morning.

23 MR. KWOK: Thank you, your Honor.

24 MR. EVERDELL: Thank you, your Honor.

25 (Adjourned to June 11, 2008 at 9:30 a.m.)

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20	Exhibit No.	Received
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June 11 2008

Trial Day Ondrik

and Yamatani Present

Summnations and

rebuttal, jury

charge

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA, New York, N.Y.

4 v. S2 07 CR 541 (RPP)

5 DANIEL B. KARRON,

6 Defendant.

7 -----x

8

June 11, 2008

9

9:2 a.m.

10

Before:

11

HON. ROBERT P. PATTERSON, JR.,

12

District Judge

13

14

APPEARANCES

15 MICHAEL J. GARCIA

United States Attorney for the
16 Southern District of New York

BY: STEVEN KWOK

17 CHRISTIAN EVERDELL

Assistant United States Attorneys

18

RUBINSTEIN & COROZZO, LLP

19 Attorneys for Defendant

BY: RONALD RUBINSTEIN

20 WILLIAM DiCENZO

21

Also Present: Rachel Ondrik, U.S. Dept. of Commerce

22 Kirk Yamatani, U.S. Dept. of Commerce

23

24

25

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1 (Trial resumed; jury not present)

2 THE COURT: If Mr. Rubinstein isn't here, and I think
3 it's important that both sides check either side's exhibits and
4 make sure they are the exhibits admitted in evidence. Mr.
5 Rubinstein nor his associate is here. So he better get in
6 here, Robert. We've got to make sure those exhibits are
7 correct.

8 They were offered in evidence and they were admitted
9 in and not for identification.

10 MR. KWOK: Certainly, your Honor.

11 THE COURT: Is he outside, the associate?

12 MR. EVERDELL: I could go check, your Honor.

13 THE COURT: Because he should be checking your
14 exhibits.

15 Robert, would you get Mr. Rubinstein's associate.

16 THE DEPUTY CLERK: He was in the bathroom a second
17 ago.

18 THE COURT: Oh.

19 (Mr. DiCenzo now present)

20 THE COURT: Mr. Rubinstein isn't here, but -- I've
21 forgot your name.

22 MR. DiCENZO: William.

23 THE COURT: You'll have to check the Government's
24 exhibits to be sure that they're exhibits admitted in evidence
25 and they have to examine your exhibits to be sure they were

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1 admitted in evidence, and not just for identification.

2 MR. DiCENZO: Okay. I had --

3 THE COURT: Because we don't want to something arise
4 during summations where they say, oh, that wasn't admitted in
5 evidence and you say oh, or Mr. Rubinstein says that wasn't
6 admitted in evidence, so.

7 MR. DiCENZO: It was -- there was one small, I think
8 it's defense exhibit Q that was a question whether it was
9 admitted in evidence. I wanted to check the record. I'll show
10 it to you.

11 THE COURT: When was it offered?

12 THE DEPUTY CLERK: June 6th, I think.

13 THE COURT: I can look at my notes, but it would help
14 if when it was offered, maybe I could help you. Take it up
15 with the government. Maybe they have no objection to it. I
16 don't know. I have to see Q -- show it to them. Show them Q.
17 Show them Q and they can determine whether they have an
18 objection. I've forgotten what Q was.

19 MR. KWOK: I think it's a chain of e-mails, your
20 Honor, relating to Frank Spring.

21 THE COURT: Relating to what?

22 MR. KWOK: Frank Spring, the government witness with a
23 slight British accent.

24 THE COURT: Here's Mr. Rubinstein.

25 THE DEPUTY CLERK: It was part of 3507.

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1 THE COURT: Oh, all right.

2 THE DEPUTY CLERK: Part of 3507.

3 THE COURT: 3507 is about 3 inches thick.

4 (Mr. Rubinstein now present)

5 THE DEPUTY CLERK: I had it as bottom of page two, all
6 of page three and then the top of page four. That's the note
7 that I had on what it actually was from all those documents,
8 but I never actually saw that exhibit was --

9 THE COURT: Do your records show it was admitted?

10 THE DEPUTY CLERK: No. I have it the -- last thing I
11 have was that you were saying that it should be -- as to what
12 it should be, but it was never actually said it was admitted,
13 but discussion was exactly what it was supposed to be.

14 THE COURT: It may have just been done to refresh his
15 recollection.

16 What page was it? What page was it on?

17 THE DEPUTY CLERK: 885.

18 THE COURT: My record is where?

19 THE DEPUTY CLERK: Is that it, June 6th?

20 THE COURT: I don't believe so. This is 11.

21 THE DEPUTY CLERK: Today's, they have it.

22 THE COURT: Was it used just to refresh recollection
23 or was it --

24 MR. KWOK: I think it was to -- we're looking right
25 now. He didn't recollect the subject of the e-mail that was

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1 shown to him, and it was not actually admitted -- there was
2 actually an objection lodged.

3 THE COURT: I saw the objection, but I didn't know
4 whether -- what happened.

5 MR. EVERDELL: It doesn't look like it was ever
6 admitted.

7 THE COURT: It was used just to refresh recollection.

8 MR. KWOK: I think that's fair.

9 MR. EVERDELL: Yeah.

10 MR. DiCENZO: I think I it was like going to be
11 admitted and then questioned is it the whole page, not the
12 whole page, and then they objected and they -- there was no
13 further dialogue with the Court on whether it was admitted or
14 it wasn't admitted.

15 THE COURT: I don't remember the subject matter.

16 MR. EVERDELL: He says, "I don't recollect, your
17 Honor."

18 THE COURT: Ask Mr. Rubinstein. Exhibit Q, Mr.
19 Rubinstein, for identification or was it admitted? I think it
20 was used to refresh recollection.

21 MR. RUBINSTEIN: Who is the witness?

22 MR. EVERDELL: Spring.

23 MR. RUBINSTEIN: I think it was used to refresh
24 recollection.

25 MR. EVERDELL: I don't think it's admitted.

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1 THE COURT: Well, then it isn't -- it's for
2 identification only, Mr. William.

3 MR. EVERDELL: So no Q, right.

4 THE COURT: Before you came, Mr. Rubinstein, I asked
5 both sides to check the other's exhibits so that we don't have
6 a dispute in the middle of summations as to whether something's
7 admitted or not.

8 MR. RUBINSTEIN: Absolutely, Judge. Mr. DiCenzo is
9 fine. Mr. Kwok saw me in my new work place hiding from
10 everybody I commandeered the cafeteria. The back wall has a
11 very nice ledge, I don't have to hurt my back, and I can spread
12 my papers out.

13 THE COURT: Okay. Are you all through?

14 THE DEPUTY CLERK: Did that work out with your
15 exhibits?

16 MR. KWOK: Yes, with one minor change. I think we'll
17 just admit it by stipulation?

18 THE DEPUTY CLERK: Okay. Which one?

19 MR. KWOK: 104.

20 THE DEPUTY CLERK: Okay.

21 THE COURT: What is 104?

22 MR. KWOK: 104 is an invoice, your Honor, that was
23 admitted by stipulation.

24 THE COURT: Each expect to take what, 40 minutes?

25 MR. RUBINSTEIN: Pardon?

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1 THE COURT: Summations, 40 minutes?

2 MR. KWOK: For me I think around that neighborhood.

3 MR. RUBINSTEIN: I seriously doubt that, your Honor.

4 THE COURT: What?

5 MR. RUBINSTEIN: I would think an hour and a half.

6 THE COURT: It's awful long.

7 MR. RUBINSTEIN: Actually it's probably the second
8 shortest summation, maybe the third shortest summation that
9 I've ever planned. I don't even think I have one full redwell.

10 THE COURT: Well, I'll remind you throughout the --

11 MR. RUBINSTEIN: Okay.

12 THE COURT: Where you are. But an hour and a half,
13 you're going to put people to sleep. I don't think if you take
14 40 minutes, I don't think you need to take more than an hour.
15 We have rebuttal. If that means I've got to give the
16 government a longer rebuttal, I don't want to give the
17 government a longer rebuttal. I don't want the government --
18 an hour and a half would mean the government would probably
19 have to engage in a half-hour or so of rebuttal instead of 10
20 or 15 minutes at the most.

21 MR. RUBINSTEIN: Well, I'll try and cut it down to an
22 hour, Judge.

23 THE COURT: All right.

24 MR. EVERDELL: Do I have time to run to the restroom?

25 THE COURT: Excuse me?

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1 MR. EVERDELL: Do I have --

2 THE COURT: Of course. Let me see if there's anything
3 else that we ought to take up. I wanted to take up the small
4 changes I made in the charge after our conference.

5 MR. EVERDELL: Okay.

6 THE COURT: You want to take those up now?

7 MR. KWOK: Sure, we can take those up now.

8 MR. EVERDELL: All right, then I'll --

9 THE COURT: I've handed out a copy of the charge, I
10 believe you've got it. And I, on the tracing, I added in, to
11 that section, money is fungible and the government need not
12 trace back.

13 MR. EVERDELL: This is in element five?

14 THE COURT: On page 22. On page -- I don't think page
15 11 need discussion about government employee. You're aware of
16 that.

17 On page 17 we took the overall description of the
18 indictment and made it consistent with the latter part of the
19 charge, saying that intentionally misapplied \$5,000 and more in
20 the care, custody and control of CASI, while it was the
21 beneficiary of a federal grant of more than \$10,000 a year.

22 I think those are the only changes. You might look at
23 the section having to do, on page 23, having to do with
24 tracing; otherwise, it's as we agreed.

25 All right, why don't you take your break.

June 11 2008

Trial Day Ondrik

and Yamatani Present

Prosecution

Summation

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1 MR. KWOK: Thank you, your Honor.

2 MR. EVERDELL: Thank you.

3 (Recess)

4 (Jury entering)

5 THE COURT: All right, please be seated.

6 Ladies and gentlemen, we're about to hear -- ladies
7 and gentlemen, we're about to hear the summations of counsel.
8 You're reminded that summations of counsel are not evidence.
9 You have the evidence before you in the form of the testimony
10 and the exhibits received in evidence and the stipulations, but
11 summations can be a help to the jury and help their thinking in
12 terms of their review of the evidence. That's what summations
13 are for.

14 So you'll first hear from the government, and then
15 you'll hear from the defense, and then the government gets a
16 short rebuttal. So we'll start with Mr. Kwok and then hear
17 from Mr. Rubinstein and, I don't know, Mr. Everdell or Mr.
18 Kwok -- Mr. Everdell, you're going to do the rebuttal.

19 Mr. Kwok.

20 MR. KWOK: Thank you, your Honor.

21 For a year and a half, Daniel B-Karron, the defendant,
22 cheated the government for over half a million dollars. He
23 cheated a program that supported him and his company, ATP, the
24 Advanced Technology Program that supports high risk scientific
25 research. The rules were clear and simple, and Dr. Karron knew

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Summation - Mr. Kwok

1 what they were; expenses not included in approved budget could
2 not be paid for with grant money. But the defendant just
3 didn't care. He said he could do whatever he wanted, and
4 that's exactly what he did. He treated the grant like his own
5 personal piggy bank. He wouldn't take no for an answer.

6 Before the grant was shut down, the defendant used
7 taxpayers money to pay mortgage on his condo, a cleaning lady,
8 medical procedures and household items like this blender, this
9 GPS system, and these power tools. All told, the defendant
10 misapplied about half of the \$1.3 million his company CASI got.

11 When this trial began, the government told you that
12 the evidence would prove to you, beyond a reasonable doubt,
13 that the defendant is guilty of the crime charged in the
14 indictment. The evidence is now in, and that's exactly what it
15 shows.

16 First, take a look at what is not in dispute in this
17 trial. At the close of this case Judge Patterson will instruct
18 you on the law. It is his instructions that control. I expect
19 that you will learn that in order to find the defendant guilty,
20 the first thing that you have to do is to decide whether he was
21 an agent of Computer Aided Surgery, Inc. or CASI. There is no
22 dispute that the defendant was the president and the chief
23 technical officer of CASI. How do you know? You know from the
24 documents the defendant signed in his capacity as president and
25 C. T. O. There's no dispute about any of these documents.

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Summation - Mr. Kwok

1 Let's look at government exhibit 10A. That's the application
2 the defendant submitted to apply for the grant. D. B. Karron
3 Ph.D., chief technical officer, Computer Aided Surgery, Inc
4 government exhibit 12 is the government document defendant
5 submitted as president agreeing to comply with the award
6 provisions.

7 Dr. Karron also submitted this letter, government
8 exhibit 21, again as CASI's president and chief technical
9 officer, saying that his business manager Lee Gerfein had no
10 authority to sign for or commit CASI financially.

11 In addition to finding that the defendant was an agent
12 of CASI, I expect Judge Patterson will also tell you that you
13 also have to decide whether CASI received federal funds in
14 excess of \$10,000 during a one year period. There's also no
15 dispute about that.

16 You heard the uncontradicted testimony of Betti Joyce
17 Lide, the first witness who came before you. She was one of
18 the true project managers for the grant. And Ms. Lide told you
19 that CASI got \$800,000 during year one of the grant. And she
20 told you CASI got about half a million dollars in year two
21 before the grant was shut down.

22 Hope Snowden and Belinda Riley both told you the same
23 thing.

24 So, ladies and gentlemen, what is in dispute in this
25 trial? It all comes down to this: Whether the defendant

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Summation - Mr. Kwok

1 intentionally misapplied \$5,000 or more of funds under CASI's
2 control to pay for unauthorized expenses. Before I turn to the
3 defendant's intent, let's go through the evidence before you
4 that shows you that the defendant did in fact misapply \$5,000
5 or more in funds under CASI's control.

6 Now, there are a lot of numbers being thrown around in
7 this trial, because huge sums of money are involved. But when
8 you get down to it, the misapplication of funds is very simple.
9 The grant specialist, Ms. Snowden, told you that the rules
10 under the ATP program are simple. She testified that she told
11 award recipients, including Dr. Karron, that your award budget
12 is like your Bible; you must follow the budget unless you get
13 advanced written approval to change it. Items that don't fall
14 under any approved categories in the budget can't be paid for
15 using grant money. It is that simple. Even for things that
16 can be paid for with grant money in theory, you need written
17 approval if you spent more than what is allowed in the budget,
18 unless the change is small, defined as any amount less than
19 10 percent of the annual total budget.

20 So how did actual spending at CASI stack up against
21 that approved budget at CASI? Now, there really is no serious
22 dispute about how CASI spent its money, because all of the
23 transactions are documented in bank records and credit card
24 statements. Witnesses may get flustered, they may not be able
25 to do math on the stand, they may get nervous, but approved

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Summation - Mr. Kwok

1 budget and the cold hard numbers in these financial statements,
2 they speak for themselves.

3 Now you heard about audits in this case. Audits are
4 nothing more than a sample testing based on the company's books
5 and records. They're subject to change as the company's
6 records change. These audits aren't perfect, especially when
7 the company books were a mess and the government already
8 auditor, Ms. Riley, told you that herself.

9 But you don't have to rely on Ms. Riley's or on anyone
10 else's audits in this case, because the government has put
11 before you bank records, credit card statements, and vendor
12 invoices showing exactly where the money that came into CASI
13 came from, and where that money went. There is no guesswork
14 involved in this case.

15 Now, in his cross-examination, defense counsel kept
16 referring to different sets of books kept at CASI at different
17 times by different people, and these changing books make it
18 seem as though it's cetera impossible to tell what really went
19 on. Ladies and gentlemen, that's a red herring. None of that
20 matters. Those financial records don't depend on what CASI's
21 books say or don't say. These records come directly from the
22 banks and from the credit card company showing exactly where
23 the money went.

24 Now, to help you review these records, Ms. Riley
25 created a spread sheet, that spread sheet, government Exhibit

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Summation - Mr. Kwok

1 110, showing exactly what went on in CASI's business accounts.
2 So let's go through some examples to show you how that spread
3 sheet works.

4 Now, here's a page from government exhibit 90, the
5 American Express credit card statements issued to CASI for the
6 defendant's use. The list of transactions on this page and on
7 the following pages are transactions made under the name of
8 Dr. D. B. Karron. It says that right there on the page. As an
9 example, take a look at page three of this monthly statement
10 and find November 29th, 2002. There was a charge for \$13.91 at
11 Starbucks Coffee, New York. Now, that information is reflected
12 in the spread sheet Ms. Riley created, government Exhibit 110,
13 page 25 of 37; Starbucks Coffee, \$13.91. As another example,
14 let's go to December 3rd, 2002 of the credit card statement.
15 Dr. Karron went to IHop, and incurred a charge of \$33.84 in
16 Arlington, Virginia. That information is once again reflected
17 in Ms. Riley's spread sheet, page 23 of 37, IHop, for \$33.94.
18 As a last example, let's go to page three of the credit card
19 statement. Dr. Karron went to an Indian restaurant in New York
20 and incurred a charge of \$107.75. Again, that information is
21 reflected in Ms. Riley's spread sheet, government exhibit 110
22 again, page 25 of 37. The Indian restaurant, the price,
23 \$107.25. Now, let's go to the first page of that credit card
24 statement this page shows that the charges we just talked
25 about, as well as all the charges during this month, total up

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Summation - Mr. Kwok

1 to around \$1,450.30. And how's that paid for? So let's go to
2 the data base and see. Let's go to government Exhibit 110
3 again, page three of 37. There is an entry showing CASI made a
4 payment to American Express, minus \$1,450.30 cents. Right
5 there. But don't just take Ms. Riley's word for it. Check her
6 work against the bank statements from Chase Bank. So let's
7 pull that up, government exhibit 81 for the December 21st,
8 2002, to January 23rd, 2003 period, page three of four. Here
9 it is. December 30th, American Express, \$1,450.30. And what
10 money went into this Chase account? Let's go to the first page
11 of the same exhibit. There it is, let's zoom that in. ATP
12 grant, 12/31, 20K; January 10th, 20K, January 22nd, 28K. And
13 Ms. Riley put that information on her spread sheets. Let's go
14 back to Ms. Riley's spread sheet, let's zoom that in, right
15 there. 20K, 20K, 28K on the dates that I just referred to.
16 But Ms. Riley didn't just put into this spread sheet money
17 coming in from the ATP. Where there was money coming from
18 elsewhere, Ms. Riley put that in as well. You remember when
19 Ms. Riley was up on that witness stand, Mr. Rubinstein waived
20 around these cancelled checks, government exhibit -- defense
21 exhibit FFF to show that Dr. Karron put his money into CASI.
22 It's not clear what the point of all that was, but one thing is
23 certain, if the point was to show that Ms. Riley made a
24 mistake, that didn't work. There was no Perry Mason moment
25 there, because all of this information is reflected in Ms.

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Summation - Mr. Kwok

1 Riley's data base. So let's go take a look at government
2 Exhibit 110, page 38 of 44, they are all right there.
3 Ms. Riley is an auditor. She might not have been the most
4 articulate witness, but she didn't overlook these checks. What
5 government exhibit 110, page 38 of 44 shows, is that while Dr.
6 Karron did put money into CASI, he also made CASI loan him
7 money, a lot of money. And at the end of the day, once you
8 subtract the numbers, and you take into account tax
9 withholding, Dr. Karron ended up taking out more money from
10 CASI than what he loaned CASI and what he is entitled to in
11 salary. And the ATP grant ended up being the only source of
12 funding that went into CASI's business account in year one.
13 And that's exactly what government Exhibit 112 shows.

14 But you don't have to rely on numbers alone. You also
15 heard the testimony of Lee Gerfein. Mr. Gerfein told you that
16 he spent 25 percent of his time at CASI fund raising trying to
17 get CASI additional sources funding, aside from the ATP fund.
18 But Mr. Gerfein told you he was unsuccessful and didn't bring
19 in any money at all while he was at the company during year one
20 of the grant. His testimony is fully consistent with what
21 government Exhibit 112 shows.

22 Now let's go to year two, government Exhibit 113.
23 Again for year two, the purple area represents how CASI's
24 accounts were funded by the ATP grant on that. You can see for
25 yourselves that for virtually all the money, it came from ATP

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Summation - Mr. Kwok

1 except for a tiny slice there, which summed up to approximately
2 \$1700, which came from miscellaneous refund checks. Again,
3 this is fully consistent with the testimony of the last
4 business manager, Bob Benedict, who told you that ATP was
5 CASI's only source of funding.

6 Let's turn now to how the defendant spent all that
7 money. I said how the defendant spent all that money, because
8 as you heard from the business managers Lee Gurfein and Bob
9 Benedict, the defendant was the only person who had signing
10 authority. And as you can see for yourself in the checks, D.
11 B. Karron was the only one who actually signed checks.

12 When Judge Patterson instructs you on the law later, I
13 expect you will learn that to satisfy the requirement of the
14 statute, the amount of misapplication the government would need
15 to prove is \$5,000 and more. So let's take a look at
16 government exhibit 114 and see what happened to the money in
17 year one.

18 As Ms. Riley explained to you, the chart to the left
19 shows the break down by budget categories, according to the
20 approved budget, how the money is supposed to be spent. The
21 chart to the right shows what actually happened, what actually
22 happened to the money. Remember, all the government needs to
23 prove is \$5,000 in misapplied funds. Forget about everything
24 else in this chart for now, just look at the rent. Rent alone
25 was \$60,000, 12 times, 12 times, ladies and gentlemen, above

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Summation - Mr. Kwok

1 the \$5,000 threshold.

2 You heard a lot of testimony about rent. Hope Snowden
3 testified that you couldn't use research money to pay rent,
4 period. It doesn't matter whether you used the condo in part
5 as an office. It doesn't matter that ATP is the only project
6 the company is working on; no means no. And that's because the
7 ATP project is to fund high risk scientific research, not
8 overhead expenses that every business has to pay. And the
9 defendant tried to get rent approved, using different
10 justifications, but he was explicitly told no, time and time
11 and time again. And the defendant didn't just hear it from the
12 NIST people. The defendant got the same no answer from his two
13 business managers, Lee Gerfein and Bob Benedict, who contacted
14 NIST at the defendant's request, got the same no answer and
15 told the defendant no. The defendant got the same no answer
16 from his bookkeeper Frank Spring. Despite all these no
17 answers, we all know what happened. The defendant said he
18 could do whatever he wanted. He said the people at NIST loved
19 him. He went ahead and he did it anyway.

20 Ladies and gentlemen, the government could stop right
21 here and meet the \$5,000 threshold required by the statute, but
22 we didn't stop there because the crime the defendant committed
23 got worse, much worse. Once the defendant decided to cheat, he
24 decided to go all out. After all, why limit yourself to rent.
25 Utilities are sort of like rent, right. You can't work or live

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Summation - Mr. Kwok

1 in a place without electricity or air conditioning, right. So
2 let's use grant money to pay for that too. And that's exactly
3 what he did, over \$16,000 in utilities in year one alone. But
4 wait. Why limit to represent and utilities? After all, you
5 can't live or work in a place that's too messy, right, so let's
6 hire a cleaning lady and to do some dusting and wiping and have
7 taxpayers pay for that too. And that's exactly what he did,
8 cleaning over \$5,000 in year one. Why stop there? After all,
9 you can't work if you're hungry, right. So let's throw in
10 meals for good measure, and have Uncle Sam pay for that too.
11 Close to \$2,000 in year one alone.

12 Now, you remember Mr. Rubinstein asking Ms. Riley
13 questions about meals. He showed her receipts of meals that
14 Dr. Karron had with handwritten notation on the back showing
15 that he ate with other people. You remember that. Well, so
16 what. Does anyone seriously think that you can go to IHop as
17 defendant did, and have taxpayers pick up the tab because you
18 claim you talked about the project over pancakes? There's no
19 line item in approved budget for meals, so you can't pay for
20 meals with grant money, period. It is that simple.

21 But no, defense counsel said it's not so simple
22 because there's this category called others that maybe you can
23 fit it in. Well, guess what? This is not a game to see who
24 could come up with the cleverest argument to see whether you
25 could make something fit. There are rules. There are written

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Summation - Mr. Kwok

1 budgets. And so let's go to government exhibit 10B, page
2 seven. This is the proposed budget the defendant himself
3 submitted that NIST later approved. You can see what others is
4 referring to. It's referring to audits, not meals; audits,
5 that's it. And so no, the defendant couldn't go to a
6 restaurant, claim he was talking about the project over dinner
7 and have the federal government pay for it. Instead, he needed
8 to pay for it himself from his own salary, just like everybody
9 else in New York City who doesn't get a federal grant.

10 Before I leave government exhibit 114, let me just
11 make one more point. Remember when Ms. Riley was up on the
12 stand. Mr. Rubinstein spent a good part of the morning
13 cross-examining her about her audit finding about Lee Gerfein's
14 salary. Remember that? Mr. Rubinstein kept asking Ms. Riley
15 why she disallowed 25 percent of Mr. Gerfein's salary, when the
16 approved budget -- it was made clear that Mr. Gerfein could
17 split his time 75 on the project, 25 on everything else? And
18 Mr. Rubinstein kept pushing and pushing to try Ms. Riley to
19 admit that she made a mistake in her audit. And Ms. Riley
20 tried to explain how she didn't make a mistake that had
21 something to do with tax withholding and the difference between
22 expected and actual salary; you remember all that? But you
23 know what, ladies and gentlemen, at the end of the day, none of
24 that matters. As you can see on this chart, when Ms. Riley did
25 her analysis using the bank records as opposed to her audits,

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Summation - Mr. Kwok

1 which were based on the company's books and records, she gave
2 the defendant every benefit of the doubt. Look at this
3 yourself. Under the budget for other employees salary, let's
4 go back to the last page. For other employees salary budgeted
5 for \$450,000, not a single cent of other employees salary was
6 disallowed. In fact, according to government Exhibit 114, the
7 company was actually under budget under the category of other
8 employees salaries. For equipment, Mr. Rubinstein also asked
9 Ms. Riley about whether she examined every piece of equipment
10 that CASI bought. Remember all that? Again, Ms. Riley gave
11 the defendant every benefit of the doubt. Again, in this
12 analysis, Ms. Riley wasn't even second guessing whether
13 defendant bought the equipment related to his research for
14 equipment. The only amount that she disallowed was the amount
15 over budget, that's it.

16 So what is the end result of the defendant's conduct?
17 Even giving him the benefit of the doubt? Over \$268,000 in
18 misapplied funds in year one alone. Make no mistake, this is
19 taxpayers money, because as you saw in the purple charts just
20 now, the ATP program was the only source of funding in CASI's
21 business accounts in year one.

22 And in year two, defendant didn't get through the
23 whole year because he got shut down, but he blew away over
24 \$196,000 in just nine months, spending money on the same items
25 that he was told time and again he could not spend grant money

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Summation - Mr. Kwok

1 on; things like rent, utilities, cleaning lady, and meals.

2 Now that we've walked through the numbers, let's turn
3 to the defendant's intent. I expect Judge Patterson will
4 instruct you later that to find the defendant guilty you need
5 to find that he intentionally misapplied the grant money; in
6 other words, that the defendant's conduct wasn't simply the
7 result of a mistake or misunderstanding. So what is the
8 evidence to show you that the defendant knew full well what he
9 did was wrong? Let's start from the beginning where the
10 defendant hired Mr. Lee Gerfein as his business manager.
11 Mr. Gerfein told you that when he was first hired, the
12 defendant agreed to an arrangement where each check over \$250
13 would have to be co-signed by himself, Mr. Gerfein, and Dr.
14 Karron. That was the understanding Mr. Gerfein had when he got
15 job. Then what happened? Within a week the grant money came
16 in, the defendant wrote this letter, Government exhibit 21,
17 page three, taking the signing authority away from Mr. Gerfein.
18 Now, ladies and gentlemen, why did the defendant do that? It's
19 simple. The defendant did that because he wanted exclusive
20 control of the grant money. Stripping Lee Gerfein of his
21 signing authority was necessary because defendant was already
22 planning to use money for his own benefit. One week into the
23 program, and the defendant was already thinking ahead. In
24 fact, the defendant made no secret of this at the time.
25 Mr. Gerfein told you that when the grant money came in, Dr.

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Summation - Mr. Kwok

1 Karron transferred \$75,000 into his own account to pay off
2 family and credit card debt that he had been racking up from
3 every day living expenses. Mr. Gerfein testified that he told
4 the defendant he couldn't do that, he couldn't spend grant
5 money this way. The defendant said he had to do it, he had to
6 pay the bills. And Mr. Gerfein, after he had been stripped of
7 his signing authority, couldn't stop him because this was
8 already a done deal.

9 What else shows you the defendant knew full well what
10 he did was wrong? Let's focus on rent again, because it's such
11 a big item. Time and again, people told him he couldn't use
12 grant money to pay rent, no matter what. The grant people,
13 Ms. Lide, Ms. Snowden, told him no at the kickoff meeting, they
14 told him no in telephone and in person conversations.
15 Defendant's own employees told him no. Dr. Karron asked Lee
16 Gerfein to call the grant on his behalf. And when Mr. Gerfein
17 got the no answer, he relayed that information back to the
18 defendant. And Bob Benedict even before he was hired, told the
19 defendant no, and he kept telling the defendant no after he
20 came on board to CASI.

21 After all these conversations, does anyone believe for
22 a minute that the defendant didn't know he couldn't use grant
23 money to pay rent? Of course not.

24 But what clinches the case against the defendant on
25 his intent is the defendant's own statements. Look now at

86bzkar1

Summation - Mr. Kwok

1 government Exhibit 213. This is an e-mail you saw a few days
2 ago from Dr. Karron to someone named Tia Lorraine, dated
3 December 18th, 2002. Reading from the fourth line of the
4 bottom of the page, let's zoom that in.

5 "I will make a lease with Windy and make like I only
6 keep a folding bed on 33rd Street. If ATP buys into this idea,
7 then I can charge my rent on the apartment to the grant and pay
8 my mortgage."

9 There's no mistaking the defendant's intent here. He
10 told a friend he would "make like" that he keeps a folding bed
11 on 33rd Street and he was hoping that ATP would "buy into this
12 idea." This e-mail is devastating proof of the defendant's
13 intent in his own words. But if you need more proof of the
14 defendant's criminal intent, take a look at these items; a
15 blender, a GPS tracking device, digital camera, a box of
16 drills, a dust buster.

17 Now, ladies and gentlemen, these may not be the most
18 expensive items in the world, but can anyone seriously think
19 that these items are related to the defendant's research on
20 surgery and computer imaging? These items he bought just show
21 you his mind set. They tell you that, when the defendant said
22 he could do whatever he wanted, that he could just schmooze
23 with people and take them out to lunch and everything would be
24 okay, he meant every word he said. But there's more. When
25 year one was over and the auditor was beginning to look at the

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Summation - Mr. Kwok

1 books, what did the defendant do? Frank Spring told you what
2 the defendant did, the defendant changed the books. You saw
3 those e-mails. Mr. Spring asked defendant to stop mucking
4 about in the books, and stop recharacterizing expenses as
5 related to the grant when they really weren't. And what
6 happened? The defendant kept changing the books. Is that the
7 behavior of someone who has no clue what he did was wrong? Of
8 course not. Common sense tells you that's the behavior of
9 someone who knew what he did was wrong and was doing his mighty
10 best to hide it as best he could.

11 Ladies and gentlemen, make no mistake, this isn't a
12 case about a misunderstanding. This isn't a case about someone
13 getting caught up in some compact grant rules and forgot to dot
14 the I's or cross the T's. This is a simple case about the
15 defendant, a Ph.D. scientist, willfully cheating the government
16 with his eyes wide open.

17 When you apply your common sense to the evidence
18 presented before you, and when you listen closely to Judge
19 Patterson's instructions on the law, there's one and only one
20 conclusion that's supported by the evidence and the law, and
21 that is a verdict of guilty on the count that's charged in the
22 indictment. Thank you.

23 THE COURT: All right. Mr. Rubinstein.

24 MR. RUBINSTEIN: Could I step out for a minute Judge?
25 Could I have a personal moment? Thank you.

86bzkar1

Summation - Mr. Kwok

1 THE COURT: All right. Does the jury need a break?

2 Anyone of you need a break? All right.

3 (Continued on next page.)

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June 11 2008

Trial Day Ondrik

and Yamatani Present

DEFENSE

Summation

86B7KAR2

Summation - Mr. Rubinstein

1 MR. RUBINSTEIN: May I proceed, your Honor?

2 THE COURT: Yes. Go ahead.

3 MR. RUBINSTEIN: If the Court pleases, people of the
4 prosecution, Dr. Karron and my associate you never met, William
5 DiSento, madam forelady, ladies and gentlemen of the jury, this
6 is my opportunity to share with you what I believe that the
7 evidence showed.

8 Now, let me say at the outset that it's your
9 recollection that controls. You have been sitting here
10 watching the witnesses, observing the exhibits that are in
11 evidence. I have been concentrating on my examination of the
12 witnesses, and if I misspeak as to what any particular witness
13 may have said, it's your recollection that controls, not mine.

14 If there is a question amongst you as to what a
15 particular witness said, you have the right to come back and
16 ask for the transcript to be given to you or read to you by the
17 court reporter, whatever the system is that Judge Patterson may
18 have. But you get the exact words that were said. And I will
19 attempt to be as accurate as humanly possible.

20 What is the purpose of summation? The purpose of
21 summation is for each party to give the jury their sense of
22 what the evidence shows and what inferences can fairly and
23 reasonably be drawn.

24 Now, after I finish speaking, the prosecutor has an
25 opportunity to rebut. He can sit there with a pad, write down

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Summation - Mr. Rubinstein

1 notes and give you answers to what I have raised in this
2 summation. And everybody in life likes to have the last word,
3 but the reality is that you folks have the last word, because
4 you collectively and individually could answer their arguments
5 for Dr. Karron that I'm not able to because I don't have a
6 chance to talk again.

7 As a matter of fact, no matter how hard I may prepare,
8 there is no way in the world that I am going to come and give
9 you all the arguments there are or even the best arguments.

10 You folks have a fantastic opportunity as jurors. The
11 second highest calling in this country next to war time service
12 is sitting on a criminal jury, judging a fellow human being.
13 This is a high calling. It's what distinguishes our society
14 from many others, because you stand between justice and
15 injustice. Every place has a prosecutor, but not many places
16 have jurors who come and sit and deliberate.

17 Now, you may notice that when you come into this
18 courtroom and when you leave this courtroom we all rise for
19 you, and we do the same when Judge Patterson comes in, because
20 that is the reverence and the respect that we have for each and
21 every one of you as jurors.

22 You are the sole and exclusive judges of the facts.
23 They can't tell you what the facts are. I can't tell you what
24 the facts are. You tell me what the facts are.

25 I can talk about the evidence. I can talk about the

86B7KAR2

Summation - Mr. Rubinstein

1 lack of evidence. I can talk about burdens, but you are the
2 sole triers of the facts. You decide what you believe, what
3 you accept, what you don't believe, what you question. That is
4 your role.

5 The judge, he is the judge of the law, the sole and
6 exclusive judge of the law. I as a lawyer have a right to
7 disagree with him respectfully, but I tell you one thing about
8 Judge Patterson that you know by now: Nobody respects jurors
9 more than he does. Getting in on time, keeping his commitment
10 to you of ending a case, that's the way he functions, because
11 he understands what a high duty you have and what a service you
12 are performing.

13 Now, when you come into this courthouse and you are
14 going towards the elevators you have seen the Lady of Justice
15 with her scales out there. And it's interesting that our
16 foreperson is a lady. And what is she? She is blindfolded;
17 she is not blind. She is blindfolded. The reason that she is
18 blindfolded is that she has the scales, she wants to treat
19 everybody fairly regardless of your background, or how you
20 look, or how you act, whether you are a bowery bum or a person
21 of high standing. And then she puts on those scales of
22 evidence and then she sees, she feels because she is
23 blindfolded. But she can see -- she is not blind. She is only
24 blindfolded -- whether or not the burden has been met by the
25 government, whether or not they have proved their case beyond a

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Summation - Mr. Rubinstein

1 reasonable doubt.

2 We're here because there was an indictment filed
3 against Dr. Karron. You heard how many years they were
4 investigating him. The judge will tell you the indictment is
5 no evidence of guilt. Dr. Karron came into this court and he
6 said I am not guilty, I didn't do anything wrong in this case,
7 and I challenge the government to prove me guilty beyond a
8 reasonable doubt. And I submit to you that the judge is going
9 to charge you with what a reasonable doubt is, but each one of
10 you could have a different reasonable doubt, whether or not you
11 feel that the prosecution hasn't brought enough evidence before
12 you, whether or not they're asking you to be speculative,
13 whether or not you think that some of their witnesses weren't
14 credible that you would rely upon in the ordinary course of
15 life. Each one could have one reasonable doubt.

16 If any of the 12 of you have a reasonable doubt -- you
17 don't have to agree on the same reasonable doubt -- you have to
18 vote not guilty, because our system after Dr. Karron pled not
19 guilty, our system presumes him innocent, and as you sit here
20 now and as you enter the jury room you have to start out saying
21 I presume him innocent, I presume that he did not intend to
22 intentionally misappropriate any funds and he did not intend to
23 commit a crime by spending grant money on purchases.

24 In fact, when he spent money, he spent money with the
25 intent that the ATP project that he was working on would

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Summation - Mr. Rubinstein

1 succeed and he would be successful, because I think it's fair
2 to say that a scientist loves doing what they do and they love
3 science.

4 The government wants you to presume Dr. Karron to be
5 guilty. They show you a GPS system -- this is his piggy
6 bank -- he bought a GPS system so he could use it in his car
7 for personal use. Did anybody testify that he used the GPS
8 system to drive around Manhattan? Did anybody bring any
9 evidence to you that he needed a GPS system for his daily life?

10 Where did they find the GPS system? Not in the car.
11 They found it in the apartment. What does that tell you? He
12 uses it when he goes on a trip. Where does he go on trips? He
13 goes to Washington D.C. on a grant.

14 Do they come and they take the GPS system and check it
15 out and see where the last destination is? These GPS systems,
16 they're electronic, and you can find out where he went if he
17 set his course.

18 Have any of you ever gone to Washington D.C. and got
19 lost on the beltway and couldn't find your way around? No,
20 they want you to speculate and assume he used the GPS system
21 for an improper purpose. They don't want to show you anything.

22 They talk about a camera. A camera. They have the
23 arrogance to suggest to you that he used the camera for his
24 personal use. Show us the pictures. It's a digital camera.

25 No, here is the camera, you don't use a camera. Why

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Summation - Mr. Rubinstein

1 don't you use a camera if you are a scientist? Maybe something
2 breaks on the machine, on one of the computers, and you take a
3 digital picture of it and you e-mail it out to the manufacturer
4 and he tells you how to fix it. Or you take pictures of the
5 people working in the labs so that when you make
6 presentations -- you know he went all over making presentations
7 about this ATP grant. Why can't he use the camera? If he was
8 a dentist, he could have a camera. No, he can't have a camera,
9 that's for his personal use.

10 Did they show you pictures of Dr. Karron on his bike
11 with Windy Farnsworth riding around Manhattan? No. No. But
12 they want you to speculate. They want to suggest to you that
13 either it's not in the budget, or if it's in the budget it's
14 unrelated to the grant. Where did they show you that anything
15 was unrelated to the grant except for speculation and smiles?

16 You know, they talk about these ATP rules as if they
17 were the Ten Commandments. These are broad rules. You don't
18 go to jail because you don't follow some grant rules. What
19 kind of country would this be if those were the rules? You
20 think they had a big sign like where they have the no smoking
21 sign and they have the circle and the thing, violate any of
22 these rules you go directly to jail? This is a question of
23 people having disagreements on what is allowed and what is not
24 allowed. That's what it is.

25 And does Dr. Karron have the right to disagree with

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Summation - Mr. Rubinstein

1 people that work for him or disagree with people in ATP? Does
2 he have a right to disagree and say that I think that these
3 expenses are allowable? Or is he compelled to be like the
4 prosecutor, say these are the rules, you break one rule you go
5 directly to jail?

6 Where does the evidence come from? They talk about
7 Riley's work. Remember, Riley's work was created after they
8 closed the grant down. I cross examined her. When did you
9 prepare this; it says 2008 on it? She says, no, no, no, I did
10 it before; this is just a redone.

11 So, after they closed the grant down, they go and
12 look, how do we justify what we did? And now we're going to
13 take every piece of paper you have, and we're going to show you
14 that you spent your money wrong.

15 Well, it reminds me of an old story in jolly old
16 England when there were lords and barrons and bishops, and this
17 baron was riding through the forest, and he noticed that on a
18 number of trees there was an arrow, and there was a circle
19 drawn around the arrow, a bulls-eye, and he was really
20 impressed. So he called his knights in, and he said I want you
21 to find that archer, I want to make him the knight of archery
22 of my fiefdom. And they went and they scoured the forest and
23 they found this fellow who was the archer. The barron invited
24 everybody in the area to come and see his new knight of archery
25 perform. There were hundreds of people, and the archer, they

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Summation - Mr. Rubinstein

1 put out a target, a hundred yards, 200 yards, the archer fires,
2 misses the target by a mile. He tries again, misses again.
3 They now move the target in, he still can't hit the target.

4 Now, the barron is pretty embarrassed by this showing,
5 so he says to the archer, before I behead you tell me that you
6 are not the man who fired those arrows that were in those
7 trees. He said, I am, sire. He said, well, how were you able
8 to hit all of those bulls-eyes? He says, sir, I stood on the
9 edge of the forest, I fired my arrows into the air, and
10 wherever they landed I drew a circle around it.

11 And that's what they did here. They have no
12 bulls-eyes. They don't have one. They put an exhibit up
13 during summation; they don't check anything out. It is
14 absolutely amazing, they check nothing out. Dr. Karron ate at
15 IHOP. Wow, check your American Express bill, see if IHOP is in
16 Virginia, right near Washington D.C., where he goes on business
17 to visit the grant people in Maryland and Virginia and
18 Washington D.C.

19 Ask yourself -- and I say to you the arrows are the
20 intent here -- whether or not he intended to do anything wrong.
21 Are they kidding, you can't go on a meal? Do you think that
22 Riley paid for her own lunch? The government paid for her own
23 lunch when she went out with Dr. Karron, Hayes and Benedict.
24 Who do you think paid for her lunch? She came in from Atlanta.
25 You don't think she gets reimbursed for her lunch? You don't

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Summation - Mr. Rubinstein

1 think people have a right in business if they have a business
2 lunch to deduct it?

3 Riley even deducted the lunch she went to. She
4 deducted the cost of the lunch she went to with Dr. Karron,
5 Benedict and Hayes. And she disallowed his lunch and every
6 other meal for that matter.

7 I guess the old Brooklyn expression "you throw enough
8 against the wall, something is going to stick" is what this
9 case is all about.

10 The prosecution started this case in 2003. When did
11 they speak to the witnesses? Did the prosecutors in this case
12 speak to one witness before April or May of 2008? It's a
13 simple case. We got the GPS, we have different things, we've
14 got roach killer.

15 So, I submit to you respectfully that you can't use
16 suspicion -- as they have -- or speculation to convict
17 somebody. Dr. Karron did not use the NIST ATP money as his own
18 piggy bank.

19 The question is even if it's nonallowable, at the end
20 of the day does that equal criminality?

21 Remember, there was a whole audit process, an entire
22 audit process where they had this agreement resolution that was
23 never afforded to Dr. Karron. In other words, under the system
24 if after Riley does her audit, you then can appeal the audit to
25 the ATP NIST people to see whether or not they are going to

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Summation - Mr. Rubinstein

1 allow those expenses. They never had that process. So, you
2 don't know as you sit there now -- and you can't speculate I
3 submit to you -- whether or not ATP would have approved it.

4 I think sadly -- and I'm going to get into this with
5 Benedict -- that they probably would have been forced not to go
6 along with it for reasons that I will talk about.

7 Also, you know, it's interesting, the government said
8 in their opening on page 39, "Finally, you will be seeing a
9 number of documents that will show you the fraud in clear black
10 and white, and in particular you will see an analysis of the
11 defendant's personal bank account and bank accounts at CASI."

12 Do you remember when I cross-examined Riley? She
13 never saw the defendant's personal bank account, she never
14 looked at his personal bank account. She didn't give a darn
15 about his personal bank account because she was looking to put
16 circles around arrows. So, she has this chart that they put up
17 on the board, Government Exhibit 115, and she has no
18 contributions. And when does she find any contributions? In
19 2004, after the grant is stopped and she is looking over.

20 By the way, Ms. Riley from the OIG, what credit cards
21 of Dr. Karron's did you happen to look at? His American
22 Express card.

23 And of course you disallowed everything on his
24 American Express card that he used for business.

25 Basically.

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Summation - Mr. Rubinstein

1 What about his Mastercard?

2 Well, I never looked at his Mastercard. I never saw
3 his Mastercard. I didn't ask for his Mastercard. I didn't
4 look for his personal accounts, I didn't look for his
5 Mastercard.

6 The defense put in the Mastercard, and when you look
7 at the Mastercard you are going to find that on the Mastercard
8 statement in October of 2001, March of 2003, you are going to
9 see Datavision, the same thing you see on the American Express.
10 In other words, he is spending his own money on grant-related
11 items with his own credit card. That's what he's doing. All
12 right? And you are going to see that in a number of different
13 areas. You are going to see that -- you will see all the
14 restaurants that he went to and charged to his Mastercard.
15 Does this show you he is a man that is attempting to keep his
16 business expenses separate and apart from his personal
17 expenses? Do they have expenses every day on his American
18 Express that he was eating out and charging it to the
19 government? No.

20 You know from the evidence that he has backup in his
21 computers of every single thing he ever spent. And we showed
22 you the receipts just as an illustration of the lunch that he
23 had with Riley. And he signed it, and he signed it, and
24 Benedict signed it, and it's in evidence for you. Because he
25 was attempting to do everything honest. He did everything he

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Summation - Mr. Rubinstein

1 could. But they draw the circle, IHOP, Starbucks. Were they
2 there when things were discussed? Did they care enough to get
3 the backup to his expenses? No.

4 So we brought you Ms. Farnsworth. Just to show you an
5 illustration, imagine this. I think this is 125. They see
6 something. They finally did some investigation. They saw --
7 when they grabbed everything in Dr. Karron's apartment, I think
8 it was in 2006 the testimony is, they cleaned out his
9 apartment, they found this. Well, it must have been everything
10 he has. Everything he has, everything he owns must have been
11 bought with ATP money, so we will take everything including the
12 shoe rack.

13 Then they find in their arrow search, wow, we found a
14 shoe rack in this statement, and that must be the shoe rack. I
15 submit to you that it's not the shoe rack, and you have more
16 than a reasonable doubt about that. And I submit to you that
17 the other thing that was charged was something about ten,
18 something with a rack. Do you know if Mason used that as
19 material to do construction there? Do you know what it was
20 used for? They didn't find it there. Why didn't they find the
21 shoe rack that they had on the bill? Because it was used for
22 something grant related.

23 What is wrong with having flashlights? You know these
24 computers, you heard about them, they come out, they go behind.
25 This is in 2001 and 2002. Computers are a lot smaller now.

86B7KAR2

Summation - Mr. Rubinstein

1 And of course computers that Dr. Karron created were big
2 things, and so you have flashlights. All of a sudden that's a
3 problem.

4 Big screen. Do you remember there was all that talk
5 about Government's 120-A? He has a big screen in the room
6 that's used as the CASI headquarters. In the picture you will
7 see a big screen.

8 And a projector. They have a projector, you know,
9 like this. And they have a screen like that. And he paid
10 grant money so that he can make presentations to people of what
11 their project is and what they're doing. And of course the
12 prosecution wants you to believe that that's not deductible,
13 that's not allowable.

14 They also suggest he had too many computers. Who are
15 they to tell Dr. Karron what he needs to accomplish what the
16 government gave him \$2 million over three years?

17 One thing you know. There wasn't one kick-back that
18 Dr. Karron got from buying anything. He didn't sell anything
19 that he bought so that he could stick some money in his pocket.
20 He had no intention of doing anything wrong.

21 And do you know what the blender was used for? And
22 let's say it wasn't used for grant purposes, so he made a
23 mistake. In their world you can't make a mistake.

24 How about the fact that Mason testified he did work in
25 the apartment, and they want you to think that they improved

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Summation - Mr. Rubinstein

1 the value of that apartment. That apartment should have been
2 worth close to \$700,000. It was sold for what, \$510,000,
3 because of all the changes that he made in the apartment. If
4 one wanted to buy it and move it, it had to be ripped out
5 because it wasn't suitable for somebody to live in.

6 And what did Mason tell you? Oh, I did some work in
7 the kitchen.

8 Oh, you did work in the kitchen? What did you do in
9 the kitchen?

10 I fixed a cabinet.

11 Did you get paid for that?

12 Yes, I did.

13 Well, I will show you this check, Mr. Mason. Is this
14 the check you got? Is this a CASI check?

15 No.

16 This is a personal check from Dr. Karron, because it's
17 a personal expense. So the man with the piggy bank is going
18 into his own pocket to pay for things that he understands are
19 not allowable under the grant and are personal in nature.
20 That's what we have here.

21 And who are we talking about? We are talking about
22 Dr. Karron, a man who goes to a meeting, an ATP meeting where
23 he is eventually going to get a grant, and he stands up and
24 says is there anybody here that can help me? Because I am bad
25 with finances and I don't know how to do this stuff. You know?

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Summation - Mr. Rubinstein

1 This is the guy that they're drawing circles around what he is
2 doing.

3 And did he destroy one record? One record? No. What
4 is their complaint? Springs testified he went into the
5 computer and he changed something. What did he change? He
6 changed whether or not it should be allowable or not. He
7 didn't change an invoice. He didn't change what was marked on
8 the check.

9 Anybody except for Riley could look at the checks.
10 Imagine an auditor never looked at the checks, never did a bank
11 reconciliation to decide what he spent.

12 Every check you saw had a memo on it. You heard Dr.
13 Karron wouldn't sign a check unless he had backup to it, there
14 was an invoice. All of that was in the computer. Is this a
15 guy looking to do something wrong?

16 They make this broad brush, he changed something
17 therefore he must have changed it to do wrong. No, it's
18 arguable. He doesn't have to agree with his accountant. He
19 doesn't have to agree with his business manager. He doesn't
20 even have to agree with the grant people. At the end of the
21 day, if they tell him it's not allowable, he has to pay the
22 money back. That's the system. That's the system.

23 This man hid nothing. How do you steal when you don't
24 hide anything and you make a note of everything you do, and you
25 never ask anybody else to do anything wrong to hide anything

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Summation - Mr. Rubinstein

1 because it's all out there? Every checking account he has a
2 different color check. He posted the records originally. Then
3 he hired people to do that, to scan the stuff in.

4 And in their opening they suggested that he did
5 something that was improper in filing the records. And you
6 found out when I cross-examined Springs and in one of his
7 e-mails about what's called an audit trail. You can go back
8 into the computer if you want to prove guilt beyond a
9 reasonable doubt and show what person made what change, and
10 then argue from that that they had guilty knowledge or a guilty
11 mind.

12 Don't argue -- I have too much respect for your common
13 sense to think you won't credit it. The bottom line is how can
14 you argue and have testimony he changed something without
15 knowing what he changed? How could you say that? There is no
16 evidence at all. The man had backup; he had audit trails.

17 I submit to you that the e-mails are the DNA in this
18 case, and they will prove, as I said in my opening, that Dr.
19 Karron is innocent.

20 The government is going to argue, and they have
21 argued, that without prior approval he misapplied the funds.
22 And I submit to you that the evidence is otherwise.

23 The third element is during a one-year period the
24 defendant intentionally misapplied money. I submit to you he
25 had the tacit authority from the grant to revise any expense

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Summation - Mr. Rubinstein

1 that he had, that this grant permits and it's understood that
2 you could change things as long as you are doing it for the
3 purpose of succeeding on the project.

4 If you have a reasonable doubt whether or not that was
5 implied by everybody that Dr. Karron met, look at this 10
6 percent rule. He can move \$80,000 anyplace he wants in that
7 budget as long as he doesn't go over the \$800,000 for the year.

8 Element four provides that the money was intentionally
9 misapplied. I submit to you that no money was intentionally
10 misapplied, because you knew and you heard a lot of testimony
11 about budget revisions, budget amendments and what have you.
12 And the fact -- even if the findings on the audit were
13 accurate -- which I submit they were not -- by Riley, it still
14 would not become criminal because there was no intent to do
15 anything wrong in misapplying the funds.

16 Now, this is not IBM. They do not have an HR
17 department. This is a ma and pa science company, and it was
18 run that way with a lot of inefficiencies in the finances but
19 not in the science. And apparently the people at ATP NIST were
20 more interested in the science than in the finances.

21 And I have been wondering, wondering for a long time
22 now why are we all here, how did this case get so out of
23 control. Well, what you learned at this trial is that ATP
24 doesn't exist anymore. The project that had \$60 million --
25 which to you and I is enough money for me to buy a couple of

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Summation - Mr. Rubinstein

1 lotto tickets every week in the hope of acquiring it -- in the
2 world of government this is not a lot of money, it's not a lot
3 of money. But who gets the \$60 million? Two thirds of the
4 grants are given to people like Dr. Karron, who need start-up
5 money. They don't have money like IBM got a grant for \$2
6 million; they also got a grant for \$50 million, but put that on
7 the side.

8 And there is something that smells here, it really
9 smells bad. And I could be dead wrong, and if I am, and if you
10 don't feel this way, you reject it. I hope you will credit
11 some of the other things that I present to you.

12 The government wanted to get rid of this project --
13 I'm not talking about the prosecutors here. They get the case
14 from other agencies -- they didn't like the idea of \$40 million
15 going to little guys. Why not give it all to the IBMs and the
16 Halliburtons of this world? Hey, we found Dan Karron. Who
17 better than this guy, who is a cook but he is no crook? And
18 that's what happened here. And now we look at him and we
19 speculate what he did.

20 And I submit to you that when you evaluate all of the
21 evidence, and you see his payroll checks which I put into
22 evidence as P-1 through P-6, where his total amount for the
23 year is about \$35,000. Ask yourself, he gets \$175,000, how
24 does he only have \$35,000? Because he took an advance of
25 75,000 to begin with that's not reflected in a check because he

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Summation - Mr. Rubinstein

1 didn't get a check for that \$75,000, it was a wire transfer.
2 He wired it into an account, into his CASI account the evidence
3 is, and so, therefore, he got net \$110,000. And that's where
4 his money was. And he commingled, and there was no rules he
5 couldn't comingle. He put the NIST money with his own money,
6 with his CASI money. Oh, CASI had no other business, but they
7 got \$110,000 cash for this man. Can't they spend it any way
8 they want?

9 And then, yeah, whenever the bank balance -- if you go
10 through all the bank balances you will see that whenever they
11 get low, who comes up with money? Dr. Karron. When there is
12 no money at all around, whose credit card is used? Dr. Karron.
13 Oh, he is a bad guy. You know, we set up this whole system,
14 and we told him he can only sign checks, he can't spend any
15 money without approval. And we had this PayPal system in
16 effect. And what does Dr. Karron do? And these are in
17 Government Exhibit 110, I believe, they have the PayPal
18 records. Obviously up until March 1, '03 Benedict is not
19 there, so he has one, two, three, four transactions in PayPal,
20 the largest of which is \$476.55. He bought 12 items of
21 something that's in PayPal, in other words \$40 an item, he
22 spent \$13.20, \$168.16 and \$283 for every item, \$168 is for 11
23 items.

24 Do you think that things were happening at CASI
25 related to the project that he needed to do something quick to

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Summation - Mr. Rubinstein

1 get a couple of dollars? Oh, he violated, he doesn't listen to
2 anybody, he doesn't do anything, he is arrogant.

3 I grew up in Bronxville, Brooklyn, and my dad worked
4 for the IRS, and he used to say, son, don't make a federal case
5 out of this. You know, my father was a smart man. I didn't
6 know what he was talking about, but I sure have learned.

7 Your job, your job is to evaluate the evidence, to
8 evaluate the witnesses who come before you. And the one thing
9 the defense has -- the only thing they have -- is the right of
10 cross-examination. It's like a prod. Somebody says something,
11 and you prod them a little bit to see whether or not what they
12 say makes sense, whether or not they have backup for it,
13 whether or not it's believable beyond a reasonable doubt.

14 I don't stand up here and tell you who lied about what
15 or said what. I leave that to your evaluation. All right?
16 You take the direct, you take the cross-examination. And the
17 beautiful thing in our system of justice is that we have a
18 right to defend our clients vigorously in this great country,
19 and I hope to god that none of you ever need that kind of
20 vigorous defense. And next to Dr. Karron, the person I feel
21 sorriest for in this whole case is Bob Benedict.

22 You have to ask yourself, how does that happen? How
23 does this happen? Here is from all you can see about the man's
24 background a truly decent guy. He volunteered to help Dr.
25 Karron from day one in this project for nothing. He came

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Summation - Mr. Rubinstein

1 onboard for \$60 an hour, which you can figure out is a hell of
2 a lot less than Gurfein was getting. Sure.

3 And this is a letter, this is an e-mail that's in
4 evidence as Defendant's U, and this is I submit to you part of
5 the DNA that I am talking about. And this is a letter, an
6 e-mail he sends to Dr. Karron on April 19, 2004, and the grant
7 is stopped since June. He is out of the loop since about
8 August or September or October, and you can just imagine how
9 this thing is killing him, what happened at CASI and that the
10 grant was stopped. And he says, "RE: Specific instances of
11 Hope Snowden ignoring requests, or not providing documentation
12 for understandings, Joan's bungling upsetting Hope; Joan making
13 certain Hope acknowledged all errors as due to Dr. K." He goes
14 on. That was the subject.

15 "As you know, one of my first acts was to assist in
16 the submission of the CASI response to the multi page
17 questionnaire tossed at CASI. This response included a budget
18 amendment along with a request to have me acknowledged as your
19 administrator.

20 "Hope ignored both requests. We never received any
21 acknowledgment, verbal or in writing, that our
22 response/amendment request would or would not be approved. As
23 such, I was never approved as the administrator and Hope would
24 not answer or return my calls. I was a "nonparticipant" and
25 therefore someone to be ignored.

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Summation - Mr. Rubinstein

1 "The fact that I had eight years experience with ATP
2 projects, as an administrator, without any audit problems, and
3 a litany of ATP references, which Hope never bothered to check,
4 didn't appear to be viewed as a positive addition to the
5 project.

6 "The rare communications we did receive were addressed
7 to Dr. Karron or Peter Ross, ignoring the fact that ATP was
8 informed Peter was no longer involved.

9 "It was VERY FRUSTRATING and apparently in direct
10 opposition to what would have been in the best interests of
11 both CASI and NIST.

12 "Ms. Snowden appeared to be a bureaucrat, totally
13 disinterested in the success of the project and only interested
14 in whether CASI dotted all the Is and crossed all the Ts,
15 associated with her rigid understanding of the ATP and other
16 relevant federal guidelines. She consistently ignored CASI
17 attempts to provide service which would help the project and
18 her in the meantime. She believed CASI was out of control from
19 the beginning and the number of personal changes and amendment
20 requests proved her right, in her mind. There was no weight
21 given to the possibility that changes were driven by Dr. K's
22 lack of ATP experience or assistance offered to help Dr. Karron
23 grapple with the ATP quagmire.

24 "ATP is as responsible for the state of the CASI
25 project as anyone.

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Summation - Mr. Rubinstein

1 "Sorry, but that's the best recollection I can
2 muster."

3 How does this man who wrote this letter come here and
4 testify before you the way he did? Ask yourself that. How
5 does he come here and initially say he knew nothing about Dr.
6 Karron advancing after the grant was suspended in June, June
7 27, '03, that he knew nothing about Dr. Karron advancing money?
8 How could he say that? I showed him an e-mail where he said
9 that Dr. Karron had put \$47,000 in, 47K and that there was 21K
10 in cofunding. He denied that we ever had any equipment issue
11 under cofunding. How does that happen to a guy that you look
12 at, who in October, who in 2004, said just the opposite of what
13 was going on than what he said on the stand?

14 I really think at the end of the day Dr. Karron is
15 going to get a call one day from Bob Benedict apologizing.
16 Here is a man who worked for IBM for over 20 years. You heard
17 from our character witness, these people get humongous
18 pensions. They got stock probably when IBM was worth ten cents
19 and probably their shares are probably worth a million dollars
20 a share that they have. How does a man like this turn against
21 Dr. Karron this way and get embraced by the prosecution?

22 Well, you know, this is the last thing I will say to
23 you about my dad. I told you he worked for the IRS. I once
24 got him, through a friend of mine who managed a Ford
25 dealership, a car. I got a call from this friend of mine and

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Summation - Mr. Rubinstein

1 he is all upset. I said, what's the matter? He says, your
2 father. I said, what do you mean? He says, I got back from
3 lunch, a Mr. Rubinstein from IRS called; I almost lost my
4 lunch. It was my father, he was having problems with the brake
5 light.

6 Well, when the prosecution shows up at your door and
7 you are the guy who submitted documents, all of a sudden you
8 get yourself on the team, and it's tragic. He tells you --
9 here is a responsible businessman -- oh, I have a CASI e-mail
10 but I never accessed it, I never look at the e-mails at CASI,
11 you see, I have a different e-mail.

12 Well, when my wife and I are on vacation, she gets her
13 e-mails from the house where we are. I mean who doesn't look
14 at their e-mails? People are anal about this stuff. You mean
15 you are the manager, the business manager of CASI, and you are
16 not accessing your e-mails, that maybe you have e-mails in your
17 other account wherever you are? Please, please.

18 Now, the judge is going to tell you that witnesses are
19 available to both sides. And you can find -- the difference is
20 that the government has the power to give immunity to people,
21 they can make deals with people, they can do a whole lot of
22 things. And of course they have the burden of proof beyond a
23 reasonable doubt. So, you could say that if they would have
24 called this witness, and if we would have credited this
25 witness, we would not have a reasonable doubt, because in this

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Summation - Mr. Rubinstein

1 case Joan Hayes, who we only heard the name but never saw, is
2 not a person whose testimony is cumulative.

3 The government relied on Joan Hayes throughout this
4 entire case, and you never got an opportunity to see her, and
5 we never got an opportunity to ask her questions.

6 You know it's interesting, Benedict and Hayes, makes
7 you think of Benedict Arnold, right? Here is the person who is
8 your accountant, who inappropriately becomes your auditor
9 because people tell you you can't wear two hats.

10 Do you remember Benedict? I asked him, did you ever
11 see Hayes' audit? Remember, she was supposed to submit the
12 audit. She got a 90-day extension in October of 2002. You are
13 supposed to submit the audit. She got a 90-day extension until
14 December 31, 2002 for the first year, and in August of 2003 Bob
15 Benedict hasn't seen the audit and Dr. Karron hasn't seen the
16 audit. Wow. You know who saw the audit? Riley, Hope Snowden.
17 They saw the audit. And the testimony is in the record, Riley
18 saw the audited before she went to make the personal visit, the
19 site visit. Before she closed the project down she used Joan
20 Hayes' numbers.

21 Where are those numbers? I asked Riley, do you have
22 any numbers? Do you have any audit sheets? Do you have any
23 general ledgers showing us how you base this?

24 No. No, I used Joan Hayes'.

25 Well, where are they? What did she give you? What

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Summation - Mr. Rubinstein

1 was her motivation, Hayes's motivation? She clearly poisoned
2 everybody at ATP against Dr. Karron.

3 Could you imagine, they have a man, Dr. Karron, who
4 they know is not a business manager, and he gets a guy like
5 Benedict to be his business manager and they won't approve him.
6 They leave Dr. Karron without a business manager from the time
7 that Peter Ross leaves until I think the date on the e-mail was
8 in early March, that Benedict comes aboard, and they won't
9 approve him. Why won't they approve him? Why won't they
10 approve a revised budget? Why won't they do anything? Why are
11 they stonewalling this? Ask yourself: Who came in the middle
12 of the night to talk to them? Same people that came and took
13 everything including the shoe rack out of Dr. Karron's house.

14 THE COURT: You're a little over 45 minutes.

15 MR. RUBINSTEIN: Halfway there, Judge, but thank you.

16 Who wrote the books? Whose books were they that they
17 used? She and Frank Spring created whatever books there were.
18 What did they submit?

19 THE DEFENDANT: Excuse me. I have to go to the
20 bathroom. Do I have your permission, sir?

21 MR. RUBINSTEIN: Judge, I will keep going.

22 THE COURT: Somebody was saying something.

23 MR. RUBINSTEIN: Yes, Dr. Karron needs a personal
24 moment, but I will keep going.

25 THE COURT: Do you want to break now?

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Summation - Mr. Rubinstein

1 MR. RUBINSTEIN: Only if the jury does, Judge. I have
2 no problem with excusing him on the record.

3 THE COURT: You said another 45 minutes.

4 If he needs a break, let's take a very short break.
5 The jury is excused for a short break.

6 (Jury not present)

7 MR. RUBINSTEIN: We might as well step out ourselves,
8 if you don't mind, Judge.

9 THE COURT: Well, all right, but come right back. I
10 have to have some time for the charge. Leave me a little time,
11 Mr. Rubinstein.

12 (Recess)

13 THE COURT: All right. Let's bring the jury in.

14 I hope you won't be too much longer, Mr. Rubinstein.

15 MR. RUBINSTEIN: I'm trying not to.

16 THE COURT: Because I have a rebuttal, then I have to
17 have a little room for my charge, and we've got to have lunch.

18 (Continued on next page)

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86bzkar3

Summation - Mr. Rubinstein

1 THE COURT: All right, please be seated.

2 Mr. Rubinstein.

3 MR. RUBINSTEIN: Thank you, your Honor.

4 Hayes is -- a letter in evidence, government exhibit
5 51. This is after she's cooperated with the government from
6 God knows when. I submitted figures that she created to get
7 this grant suspended. 51, she writes a letter, or Dr. Karron
8 writes a letter to Hayes, so she's still in communication with
9 Dr. Karron, even though you know from e-mails --

10 MR. KWOK: Objection, not in evidence.

11 MR. RUBINSTEIN: Oh, I'm sorry. Okay.

12 THE COURT: Exhibit 51 is not in evidence.

13 MR. RUBINSTEIN: It's in their book.

14 So I submit to you that, that you have a lack of
15 evidence just on the absence of Hayes.

16 And you know from the testimony that Benedict had no
17 idea that Hayes had given the audit report to Riley prior to
18 the meeting. Imagine, she went to the meeting in June and
19 was -- in June they had the meeting. Riley came to the site
20 visit and Benedict, Hayes and Dr. Karron were present -- that's
21 the lunch that is in evidence. And she stayed aboard, because
22 she kept feeding, feeding numbers to Benedict, not to Dr.
23 Karron. Dr. Karron's a scientist. You know, he didn't create
24 these numbers. And we know that Benedict kept giving
25 numbers -- I mean Hayes kept giving numbers because we have

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Summation - Mr. Rubinstein

1 those amended financial status reports that were filed
2 August 13, 2003. And Benedict tells you where he got those
3 numbers from. And you also know that Benedict was paid -- that
4 Dr. Karron paid after the grant was suspended -- he's not
5 supposed to, but he wants -- he wants the project to work. So
6 he's paying expenses. He puts -- you know about \$47,000 in
7 cash that he refinanced -- it's in the e-mails -- he refinanced
8 his apartment, put the money into the grant to keep the grant
9 going. Is that -- does that sound like somebody who is looking
10 to intentionally misappropriate funds? This is a high risk,
11 innovative technology that he's working on that requires
12 changes as you go along. Everybody tells you. And mistakes in
13 science, I submit to you, are merely experiments that didn't
14 work out. Those are mistakes. So you keep changing things.
15 You need more workers. So he gets volunteers. You heard about
16 all the people that are in the apartment. He gets students.
17 What are all these people doing there? They're all working on
18 a project. Does anybody suggest that he's not working on a
19 project every minute that he has?

20 And you know that the mantra of ATP is, it's your
21 business, your money, do whatever you want and we'll back you
22 up because we're interested in science here. But then the bean
23 counters come in and they start drawing circles around every
24 number to suggest you're doing something wrong. And that's
25 what we have here. Imagine leaving this company without a

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Summation - Mr. Rubinstein

1 business manager.

2 Now, you know that the grant is a fungible thing,
3 because exhibits four -- do we have that exhibit? I think it's
4 page 11. It tells you you could seek a revision at the end of
5 the year. Not the end of the year of the grant, which is
6 October -- in this case September 30th, 2002, but at the end of
7 the year. And all of these revisions that were submitted by
8 Ross and what have you, related to 2001. In other words,
9 you're allowed to go backwards. You don't need approval
10 before. You know, for every rule that they have, if you look
11 through these books, you're going to find a rule that says the
12 opposite. And they expect people to read a couple of hundred
13 pages of information. Somebody's giving you a check for
14 \$800,000, you sign on the bottom line and you're not worrying
15 about the details. You know you're not going to do anything
16 wrong. Do you read everything that the credit card company
17 sends you? They send you these things about changes in your
18 credit card stuff. Got to make an admission, I don't.

19 Do you have that?

20 MR. DiCENZO: No.

21 MR. RUBINSTEIN: All right, we'll find it and put it
22 up later.

23 Now, so that's what Dr. Karron understood. He
24 understood that he could have the grant changed and he could
25 have the lines changed. And why wouldn't he? Doesn't it make

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Summation - Mr. Rubinstein

1 a heck of a lot of sense to you people? But no, they disallow
2 Winter's salary. Winter worked in the office. Not only
3 disallowed her salary, they also disallowed she got child care.
4 They didn't like that. So you don't have salary, you're not
5 entitled to fringe benefits, and also you shouldn't have child
6 care anyhow. Who are they to say what fringe benefits your
7 company should give you? Who are they? They tell you, oh, you
8 should have a -- something in place. You need a written
9 manual. Why do you need a written manual for? Nobody's going
10 to look at it. Nobody's going look at it. They don't review
11 the written manual. You don't have to submit it. Nobody asked
12 for the manual. You're allowed to make fringe benefits.

13 But we do have a written manual. And who created it?
14 Bob Benedict. He created it. We put it in evidence. And the
15 government gets up on redirect and says, well, wasn't that July
16 2nd after the grant was suspended? What do you think, he made
17 that document on July 2nd; he start working on it on July 1st
18 and he stayed up all night? Come on. You have e-mails back in
19 August of '02 relating to this lawyer Miller, who is apparently
20 on the board of CASI, asking about documenting it. But the
21 reality is in this grant, where nothing's written in stone, if
22 you do what's reasonable and you did it before, you know you're
23 not going to have any trouble.

24 But then you get an auditor -- I mean I leave to it
25 you. You judge the witnesses. Riley. She disallows part of

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Summation - Mr. Rubinstein

1 Dr. Karron's salary. She disallows it. He didn't spend
2 100 percent of time on the grant. Well, what if he spent 80
3 hours a week? If he spent an hour, two hours on something
4 else, afterward, those 80 hours, uh-uh. Let me ask you; ATP
5 approved \$175,000 for Dr. Karron. Did they expect him to get a
6 \$175,000 in salary? Of course they did. They didn't expect
7 the bean counter to come along and say you're not allowed to
8 take the whole 175. And that would've been resolved in an
9 audit resolution.

10 Then we talked about Mr. Gurfein. Gurfein got
11 \$100,000, net -- I'm sorry, gross salary. So, well, 25 percent
12 of his time wasn't spent on ATP, so we took off 35 percent. So
13 I showed her the exhibit H. And did she ever answer it? She
14 gave you double talk that you haven't heard since you heard
15 comedians that could double talk.

16 The amended budget that's approved, which is part
17 of -- which is the defendant's H, it shows Gurfein gets a
18 133,333, he devotes 75 percent of his time, and that equals out
19 mathematically to \$100,000. Well, no, it's 75 percent of a
20 hundred. Well, no no. She's getting 133. What's 75 percent
21 of 133? They say numbers don't lie.

22 You have witnesses like Hope Snowden. She tells you
23 about she discussed the \$75,000 that Dr. Karron took as an
24 advance, with Agent Garrison. And when I cross-examined her, I
25 showed you that the first time, and she conceded it, that she

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Summation - Mr. Rubinstein

1 ever spoke to anybody about the \$75,000 advance, was on
2 September 8th, 2003. And I confronted her with Government's
3 exhibit 3504A and she agreed with that. All right. So
4 whatever reason, she was stonewalling Benedict and the revision
5 provisions. Government worker, and she's taking the government
6 line. All right.

7 Now, I asked her about these preaudit, pre-grant
8 costs, and she said you do that at your own risk. So, does Dr.
9 Karron -- so can you get ATP to agree to let you use your
10 preaudit spending -- pre-grant spending, the money you spent
11 before October 1st, 2001, and you can take that as an allowable
12 expense; is that something you could consider?

13 Now, but she wants you to think that she's, she's on
14 top of what's going on. Nobody cared what was going on, as
15 long as science -- remember they had visits? They had site
16 visits, and Lide told you, yeah, they were progressing on the
17 science. That's what they cared about at ATP. That's what
18 they should have cared about. They should have cared about
19 that.

20 Now, the mantra was, no good project goes unfunded.

21 THE COURT: An hour and 15 minutes.

22 MR. RUBINSTEIN: Pardon, Judge? That's not so. We
23 started at 45. I cannot possibly have talked a half an hour.
24 You're putting in the recess on me, Judge. That's not --

25 THE COURT: I am --

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Summation - Mr. Rubinstein

1 MR. RUBINSTEIN: That's not fair at all. I didn't
2 want a recess.

3 THE COURT: No, I know. I haven't stopped you yet.
4 I'm just giving you a, just giving your time line --

5 MR. RUBINSTEIN: All right.

6 THE COURT: -- so you know where you are.

7 MR. RUBINSTEIN: Judge, you know I love you, but I got
8 to go, I got to go.

9 In exhibit 10B in evidence, this is what it says, this
10 is on the budget that is part of what you submit. They say:
11 We -- this is government talking -- we recognize that
12 unexpected events occurred frequently in R&D, research and
13 defendant projects, and that budgets may be needed to be
14 changed as the project proceeds. Okay. That's all you have to
15 know about the budget. It's not written in stone. It's a
16 living breathing thing. And if you look at Exhibit 4, page
17 11 -- it's not in your book -- it says, you can revise the
18 budget at the end of the year. And that's what he did, and you
19 can give 10 percent anyway you want.

20 Now, the smoking gun, rent. The smoking gun in this
21 case. When was the rent paid for? CASI collected rent. Dr.
22 Karron collected rent from CASI since 1995. There's no
23 evidence that CASI was not paying rent, and that Dr. Karron
24 wasn't showing it on his income tax returns for the whole time
25 of the grant.

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Summation - Mr. Rubinstein

1 You know that there was a period where he didn't have
2 work and the rent went unpaid so that he was owed the rent. If
3 he owed a bank loan and he took money and paid off a bank loan
4 that he owed before the grant, what would they be saying? So
5 we have this issue of rent. He feels, he feels that he should
6 be able to collect rent from ATP. Why? His is a unique
7 situation. He only has one project. They called direct and
8 indirect costs. He says everything is direct, because I have
9 only one project. These other places have more than one
10 project so they can't say how much of the rent is the project.
11 So let's follow it. And everybody is telling him, everybody's
12 saying you can't do it, you can't do it. He keeps trying, he
13 keeps trying, he keeps trying.

14 Finally, near the end of 2002 it dawns on him, he's
15 not getting the rent. Now, a decent accountant then reapplies
16 all whatever he spent for the rent that they adjusted. That's
17 what the accountant does, they go into your credit card, your
18 this, your that, they decide what is attributable to you and
19 what isn't, what is personal.

20 He now has this brilliant idea. He's a bright guy; I
21 am going to move out of the apartment, I'm going to move to
22 Connecticut to my friend Windy's house, I'm going to pay her
23 rent and then I'm not using the apartment for my house and I
24 could deduct it. Great idea. So he goes, he makes a contract
25 with Windy. He gives her 2,000 in advance. He's all set to do

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Summation - Mr. Rubinstein

1 it, when they realize this is ridiculous. I'm going to be
2 going up and back from Connecticut. Probably realize, you
3 know, if I use my GPS going up and back from Connecticut it may
4 not be a business expense, you know, it may not be allowable.
5 So he decides not to move into Windy's. And what does he do?
6 What does he do, ladies and gentlemen? He doesn't take rent
7 any more. There are no checks for rent in 2003, not in this
8 grant. So once it finally went through his head that you can't
9 do it, it's not allowable, this arrogant guy, according to
10 them, listens to nobody, stopped taking rent.

11 Now, you're going to look at the credit cards, you're
12 going to look at the Master Card. You're going to see how
13 often he had meals, where they were, what places. You know
14 that he took Lide and Jane Orthwein to lunch at Benjamin's.
15 You see he goes to Benjamin's other times. You'll see these
16 restaurants and what have you. All right.

17 You're going to consider the audit, or the lack of
18 audit. I submit to you that 110, Government's 110 and 111,
19 which were created long after the grant was suspended, after
20 they made the final report, after they made the final report in
21 March of 2004, then she went and audited it. Then she created
22 records to justify what she had done before. There was
23 probably about 45 checks in this whole reconciliation that they
24 never did. So ask yourself, are you going to rely upon any of
25 the numbers that Riley created.

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Summation - Mr. Rubinstein

1 Now, I'm going to skip a whole bunch of stuff. I'm
2 going to go to August 13, 2003. And August 13th, 2003 -- oh,
3 by the way, rent and utilities are not permitted. They're
4 indirect costs. You know from the testimony in this case that
5 CASI was approved to take off, to deduct utilities, a portion
6 of the utilities. Because you'll see the e-mails and you'll
7 see that in the exhibits they were allowed to take off electric
8 \$7600, right. Why? Because it's an indirect cost. Well, how
9 did you get it? Because it's negotiable. They submitted the
10 bills showing that the increase in electricity, due to the
11 equipment, showed a rise to the extent that they felt the grant
12 people felt that Dr. Karron was entitled to reimbursement for
13 on his. When you look at the book and you'll see that October
14 19th, 2002 was the last rent payment made to Dr. Karron, okay.
15 \$2,000. And only one rent payment was out of NIST. And I
16 submit to you that they had authorized fringe benefits. They
17 were authorized 110,000. Who is the person that is permitted
18 to tell you, after you've been authorized to spend 110,000 and
19 you can't spend 110,000? Who? And they deduct your payroll
20 tax -- they deducted your -- reduce your salary so now you
21 couldn't take your payroll taxes. You got a salary. So now
22 they come up with a figure of \$547,000 which is -- that's
23 criminal.

24 Now, I want to get, because I -- did anybody say that
25 these medical expenses weren't deductible? No. Their argument

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Summation - Mr. Rubinstein

1 is well -- or weren't legitimate? No. Their argument is that
2 they -- there was no plan in place. And I submit to you they
3 didn't need a plan. They had a plan. That's the way they did
4 it. That's the way they always did it. And that even Benedict
5 said that you can use the matching costs, you could use your
6 own equipment. And there's no question that Dr. Karron had
7 equipment in his place when he started this grant.

8 But I want to go, because I told you, to August 13th
9 because I'm -- of '03, and this is the setting. Bob Benedict,
10 these are -- there are exhibits in evidence Government's 40
11 40A, 41, 41A, 42, 42A, 43, 43A. These are the financial
12 reports, quarterlies. Remember, they had to submit quarterly
13 reports. And low and behold on August 13th, 2003 after the
14 grant is suspended, Bob Benedict prepares these amended
15 financial reports. Whose figures does he use? Obviously Joan
16 Hayes. He suggests that Dr. Karron saw these, approved them
17 and what have you. I'm going to prove to you, beyond any
18 doubt, that that's not true, just not true. A, you're going to
19 see from the Master Card expense records in evidence, as
20 defendant's ZZZ-1 that -- where you're going to find that all
21 kinds of medical benefits were paid on behalf of Dr. Karron.
22 And you're also going to find that all kinds of equipment,
23 including to Elliott -- I'm sorry -- Elliott Medical Group,
24 you're going to see Dr. Brants, you're going to see Kips Bay
25 Optical, all of this is paid on the Master Card. Should he get

86bzkar3

Summation - Mr. Rubinstein

1 credit for that? I submit he should under his medical benefits
2 plan.

3 You're going to find, when you look at the Master Card
4 bill, that on August 13th, 2003, Dr. Karron was in Canada.
5 You're going to see medical bills paid for on August 13th, 2003
6 that were incurred on that day that he was in Canada, because
7 you give a credit card, they put the date, they put the place,
8 and so he's in Canada.

9 How do these, that he's supposed to be this criminal,
10 this master mind criminal, fudging and making records, and what
11 have you -- let me show you -- give me 48, and give me -- I'm
12 going to show you -- could you put this up, please? This is
13 48. Now, I submit to you, on the bottom of that is a
14 signature. That's not a handwritten signature when you take a
15 look at the document. That's a printout signature. It's not
16 Dr. Karron's. And you see on the bottom of the exhibit --

17 THE COURT: The bottom line?

18 MR. RUBINSTEIN: Yeah, bottom line. You see it says
19 "revised". See it's dated. Can you see from where you are,
20 August 13th, 2003? Whose initials are next to revised? I
21 submit to you if you take a look at exhibit 48 in evidence, Bob
22 Benedict signature, that Benedict submitted those forms, okay.
23 And it makes sense. It makes sense. You think that Dr. Karron
24 is checking out these numbers and doing those things? I submit
25 to you that this is a case put together with no substance; that

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Summation - Mr. Rubinstein

1 Dr. Karron had absolute right, not beyond a reasonable doubt,
2 beyond any doubt, to expect that these expenses that he was
3 charging would be accepted, because he was working his butt off
4 for this grant. He was trying to succeed, because that's who
5 he is. He was trying to develop something. And I don't want
6 sympathy. I don't want sympathy that it was a great project
7 and maybe we all would've benefited from it. I don't want
8 sympathy from that. I want justice. I want justice. And I
9 want you to look at this case as a scientist working, and you
10 see the hours on the e-mails, day or night. If you look at the
11 credit card statements and you see where he is and different
12 states and what have you, and say whether or not this was his
13 thought. His thought was to keep -- I submit to you we proved
14 to you his thought was to keep the thing going, to keep it
15 going even after they told him it was suspended, to keep it
16 going. Why did he put money in after it was suspended? Are
17 they going to argue to you that he did that as a cover up; that
18 he thought that if he put money in, that this is going to solve
19 his problem because he's involved in this criminality
20 beforehand? Is that what they're going to stand up here? I
21 submit I rely upon you to answer that argument for me. He
22 believed all along that this grant would be restored, and
23 somehow if he owed money, he would pay the money back if he was
24 mistaken. He didn't have a problem with that at the end of the
25 day. He thought he was right. Maybe he was wrong. So he put

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Summation - Mr. Rubinstein

1 money in. He kept people working, and he spent money on the
2 grant. And his problem was that he believed the people around
3 him. He believed in Hayes. He believed that she was on his
4 side, and that the numbers that he was getting were correct
5 numbers.

6 Now, the bottom line is the grant has never been
7 terminated; right? They have no evidence of termination.
8 Suspended. And the Judge is right, I could talk for another
9 two hours. And I probably, when I sit down or when I go to
10 sleep tonight and wake up, I could think of some of the most
11 significant things I could think of to share with you people.
12 But the reality is that you sat here, paid attention. You know
13 the evidence, you know your duty. I have -- being a criminal
14 defense lawyer is an awesome responsibility. And you have --
15 I've done all I could, okay. He came here, he pled not guilty.
16 We'll wait here for you folks to come back and say he's not
17 guilty. And I thank you, and I could still say good morning,
18 so have a good morning.

19 THE COURT: Thank you, Mr. Rubinstein.

20 MR. RUBINSTEIN: Thank you, Judge.

21 THE COURT: All right. Are you ready to proceed, Mr.
22 Everdell?

23 MR. EVERDELL: Yes, your Honor.

24 Ladies and gentlemen, every case in federal court is
25 important, but not every case in federal court is close. This

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LAST Trial

Day

Ondrik and Yamatani

Present

PROSECUTION

Rebuttal

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Rebuttal

1 is not a close case. The evidence that you've heard over the
2 last week has been clear, that the defendant misspent grant
3 money, and he spent the money on things that he knew, things
4 that he was specifically told he couldn't spend the money on.
5 And what's even more outrageous is that the defendant spent
6 money that was supposed to go for scientific research to help
7 us all, money that other scientists who didn't get this grant
8 could have used to make wonderful life changing discoveries.
9 So the defendant didn't just cheat the government, he cheated
10 all of us.

11 Now, the defense counsel in his closing remarks tried
12 to take your eye off the ball in this case. He tried to make
13 you focus on a number of things that are not really at the
14 heart of this case. He wants you to speculate about witnesses
15 you didn't even hear from. He wants you to wonder about what,
16 whether the defendant was in Canada in 2003, after the grant
17 was even suspended. These are not the things that are at the
18 heart of this case. So in the next few minutes I want to take
19 a step back and I want to focus briefly again on how the
20 evidence shows the defendant intentionally misspent the grant
21 funds, and then I'm going to focus a little bit about some of
22 the arguments the defense counsel made in his closing remarks,
23 and see why none of it is borne out by the evidence.

24 Now, first, let me just reiterate one point to you,
25 ladies and gentlemen. The government bears the burden of proof

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Rebuttal

1 at all times. The defendant doesn't have to say anything or do
2 anything to prove his innocence. But you are entitled to
3 examine the case they put on and the arguments defense counsel
4 made, to see whether or not they make any sense.

5 So with that, let's first take a step back and look at
6 just a few examples of the evidence before you of the
7 defendant's guilt.

8 Let's take a look at regs. This is a big item in the
9 case. There can be no doubt that the defendant was told,
10 repeatedly, by several different people that no matter what the
11 situation may be, you cannot use ATP funds to pay for rent.
12 The defendant heard it from Hope Snowden, who told him this
13 right after the grant was awarded. He heard it from B. J.
14 Lide, another of the grant administrators. He heard it from
15 his own business manager, Lee Gurfein, who himself had heard it
16 from Hope Snowden, in a phone call repeatedly. He heard it
17 from Frank Spring, the bookkeeper he hired in connection with
18 the first year audit, and he heard it from Robert Benedict, his
19 second year book manager, business manager. Indeed it seems
20 like the only person for whom this was not completely evident
21 was the defendant. And why is that? It's not because the rule
22 wasn't crystal clear. It was. It was because the defendant
23 simply refused to listen to what he didn't want to hear.
24 Remember what Robert Benedict told you about how --remember
25 what Robert Benedict told you about how the defendant operated.

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Rebuttal

1 He would go from person to person asking the same question
2 again and again until he got the answer he liked. Well, in
3 this case the defendant never got the answer he wanted and he
4 went ahead and he did it anyway.

5 Remember what Lee Gurfein told you, he thought -- he
6 told you that the defendant thought that everyone at NIST loved
7 him and that he could do anything he wanted with the money.
8 That's exactly what happened here. This did not happen because
9 the defendant didn't understand the rules or make an honest
10 mistake. This happened because the defendant refused to
11 understand what all parents tell there five-year-old kids when
12 they stomp their feet and hold their breath when they don't get
13 what they want, and that means no means no.

14 And in the end the evidence clearly showed the
15 defendant intentionally misspent \$60,000 on rent in the first
16 year of the grant alone.

17 Now, defense counsel got up and he talked to you about
18 rent. What did he say to you about rent? He said the
19 defendant felt entitled to it. And that's exactly the problem,
20 he felt entitled to it. He was told he couldn't do it, and he
21 did it anyway. And he says, it finally dawned on him in 2002
22 that he couldn't use ATP funds to pay for rent? It finally
23 dawned on him in 2002? That's not what the evidence showed.
24 He was told in 2001 repeatedly by many different people. How
25 could it possibly finally dawn on him in 2002 that you can't

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Rebuttal

1 use these funds to pay for rent? How is that possible? It's
2 because he's deliberately ignoring everything that people are
3 telling him. This is deliberate ignorance on the part of the
4 defendant. He does not deserve some kind of special
5 congratulations because he stopped paying rent to himself in
6 2003, after the grant was suspended.

7 MR. RUBINSTEIN: Objection. It wasn't after, it was
8 before.

9 THE COURT: Objection sustained to that.

10 MR. EVERDELL: And of course there were the utilities.

11 THE COURT: I think the evidence -- my recollection --
12 the jury's recollection will govern is that it was in December
13 of 2002 before the grant was suspended in June 2003.

14 MR. EVERDELL: And there were the utilities as well.
15 Again, the defendant was told repeatedly by multiple people,
16 you can't use ATP funds to pay for utilities. Again, he chose
17 not to listen and he spent \$16,000 on utilities in year one
18 alone.

19 And, finally, there were several charges the defendant
20 incurred that were not only in the budget, not -- excuse me --
21 not in the budget, but that no one could possibly think were
22 legitimate research expenses. Over \$5,000 in the first year of
23 the grant alone for his cleaning lady, Margaret Ferrand.
24 Defendant counsel didn't comment at all on that in his closing
25 statements for his cleaning lady. The checks themselves on the

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Rebuttal

1 memo line say cleaning. How is that possible that anyone could
2 understand that that's a grant related expense? The rules were
3 clear. You got --

4 MR. RUBINSTEIN: Objection, your Honor. There's
5 evidence that she scanned, she did other things -- their own
6 documents.

7 THE COURT: Objection overruled. It's argument.

8 MR. EVERDELL: And there are a hundred dollars on
9 meals and personal items like the blender and the dust buster.
10 I mean take a look at these items, ladies and gentlemen. Are
11 there anything -- does anyone believe these are for scientific
12 purposes?

13 We've talked a lot about -- defense counsel talked a
14 lot about the GPS tracking device, and where he went with it.
15 He may have gone to D.C., but the issue is not where he went
16 with it. The issue is what money he used to pay for it. This
17 is not an approved expense. And by the way, if you look at the
18 luggage tag that it's on it, this was used in a flight August
19 13th, '05, well after the grant was suspended. This is a
20 personal item. He's not using this for grant stuff. We're not
21 saying that you can't have a digital camera. We're not saying
22 you can't have a GPS device or a blender or dust buster.
23 Simply saying that you can't use grant funds to pay for it.
24 And that's evidence, that is evidence and it was evident to the
25 defendant. And these items just go to show that the defendant

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Rebuttal

1 was reckless with the taxpayer money and was using it to pay
2 for his daily personal expenses. Remember what Lee Gerfein
3 told you. He testified that during the grant proposal writing
4 process, he saw what he believed to be the defendant living off
5 his credit cards because he had no other money. Well, once the
6 ATP funds became available, the defendant did exactly the same
7 thing with the ATP money, he cut himself \$75,000 and used it to
8 pay his personal debts.

9 And let's not forget the evidence clearly showed that
10 all these funds were being spent with ATP funds. CASI had no
11 other money. That's what the bank statements that Belinda
12 Riley talked about show, and that's what both CASI business
13 manager Lee Gurfein and Robert Benedict told you, there was no
14 other money.

15 So now that we have a clear picture of what's at the
16 heart of this case, let me address some of the arguments
17 defense counsel raised in his closing remarks. Now, first one
18 of the things that he mentioned, that he raised was that the
19 government is trying to put the defendant in jail just because
20 he violated some grant rules; how could he possibly master
21 hundreds of pages of rules and thick regulations; nobody could
22 possibly do that. Well, that's not what we're saying. Of
23 course it's not necessary for the defendant to have an
24 encyclopedic knowledge of the Code of Federal Regulations and
25 the ATP grant rules. That was Hope Snowden's job. However, it

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Rebuttal

1 was the defendant's obligation to listen to what Hope Snowden
2 told him and what others told him about what he could and
3 couldn't do under those regulation. And that's what he didn't
4 do.

5 The defendant chose to disregard that advice, and in
6 fact not only did he not listen to Hope Snowden, but he did not
7 listen to the people that he specifically hired to help him in
8 these areas; his business managers, his bookkeepers. That is
9 not trying his best to comply. That is not an innocent
10 misunderstanding. That is conscious flouting of the rules.
11 And it doesn't take a Ph.D. to be able to listen and understand
12 what everyone around you is telling you.

13 Now, he thought I suppose, defense counsel commented
14 that he thought he was free to disagree, he was free to
15 disagree if he wanted. Well, if I entrust you with my money
16 and I tell you that you can't spend it in certain ways, you
17 can't do X and you can't do Y, then you don't have the freedom
18 to disagree with me. You have to spend it how I tell you you
19 can spend it. The disagreement is not an issue. He was told
20 what he could and couldn't do. Just take a look at rent,
21 utilities, and he did it anyway.

22 Defense counsel also commented that, well, the
23 defendant was bad with finances, right. He's an incompetent
24 manager; we can't hold him responsible for that, we certainly
25 can't send him to jail for that. Well, we agree that the

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Rebuttal

1 defendant was an incompetent manager, but that doesn't get him
2 off the hook. You heard testimony that he was a hands on
3 manager. He hired people to run the finances and keep the
4 books straight, but then wouldn't let them do their jobs. Now
5 if you're a defendant, if you're a defendant and you're such an
6 incompetent manager, you're bad with finances and all you
7 really want to focus on is the science and not bother with all
8 the boring business stuff, wouldn't you hire people to do it
9 for you and then let them do what they needed to do so that you
10 could get on with your research? Of course you would. That's
11 not what he did, though. He didn't. He wanted to keep control
12 of the books.

13 You heard testimony that Lee Gurfein, first year
14 business manager, was stripped of his authority to sign checks
15 by the defendant. Why? Because the defendant wanted to keep
16 control of the books and the check writing, because he wanted
17 to spend the money the way he wanted to spend the money, and he
18 didn't want any interference with that. That's not someone who
19 just want to focus on the science and leave all the business
20 stuff to somebody else. That's someone who wants to be right
21 in the middle of things. And there's a reason why he did, he
22 wanted to keep control of the money for himself. And when he
23 saw things he didn't like, he would muck around in the books he
24 changed entries and meddle in areas that people knew better
25 than he did. Why did he do this? Because he thought he knew

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Rebuttal

1 better, and he thought he could do what he wanted and he
2 thought he'd get away with it.

3 Defense counsel also said something about how there
4 was tacit authority from grant to revise any of the costs he
5 wanted at any time. Well, where is the evidence of that? Did
6 you hear that from Hope Snowden that he could just negotiate
7 any time you want? No. No. There is no evidence of that.
8 You are allowed to amend your budget during the grant year and
9 for years that happen or still to come. We heard that, yes.
10 But you're not allowed to amend your budget for years that are
11 already over. Hope Snowden told you that, and so did Robert
12 Benedict. And if you look at page 11 of Exhibit 4, the defense
13 counsel mentioned, that's what they were testifying about.
14 That year is already over. That money is already spent. You
15 can't unring that bell.

16 And there are rules. It's not all one big
17 negotiation. You heard from Hope Snowden that she told the
18 defendant, the budget is the Bible; you got to get everything
19 in writing, you got to get it approved if you're going to make
20 significant changes. That was crystal clear. It's not all one
21 wash, big negotiation. That's not how this works.

22 Now, after defense counsel had commented about how
23 we're supposed to interpret the defendant's actions, he also
24 took some shots at the witnesses. And he took a shot at NIST
25 and tried to make it seem like it's their fault that this all

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Rebuttal

1 happened, right. You recall him talking about NIST, and they
2 must have had something against the defendant that they were
3 out to get him and they wanted to end this project. Well, what
4 evidence is that of that? You heard --

5 MR. RUBINSTEIN: I didn't say that. I didn't say it
6 was NIST.

7 THE COURT: Objection.

8 MR. RUBINSTEIN: Mischaracterization.

9 THE COURT: Objection sustained, Mr --

10 MR. RUBINSTEIN: People over there.

11 THE COURT: Objection overruled, Mr. Rubinstein. This
12 is argument, and they can remember what you said.

13 MR. EVERDELL: Defense counsel said they were picking
14 on his client, Dr. Karron. You saw exactly why this grant got
15 suspended. It's because they saw so many different numbers
16 coming at them in such quick succession that they thought
17 something really bad was going on there with their funds, they
18 were getting misspent, in a really bad way. And that's why it
19 would happen. They got these budget revisions all within weeks
20 of each other. All the numbers were different for year one
21 even after year one was over. That raised red flags, and
22 rightfully so. That's what the problem was. And then they
23 called in the auditors and there was a problem, low and be
24 hold. And that's why the grant got suspended, it's because he
25 was misspending the money. We weren't out to get him. They

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Rebuttal

1 just want to make sure our taxpayer dollars are being spent for
2 what it's supposed to be spent for, for research, and it
3 wasn't.

4 And they tried, defense counsel tried to take some
5 attacks on the witnesses, about Hope Snowden. Tried to make
6 her look like she was just some bureaucrat, rigid understanding
7 of the rules. And she was not out to help him. Well, you met
8 Hope Snowden, all right. You remember her testimony. Hope,
9 evaluate for yourselves what kind of person she is. She told
10 you that she was always willing to receive and answer questions
11 and receive calls. And she did that on numerous occasions for
12 the defendant and for Lee Gurfein.

13 Now the fact she didn't always say yes to them doesn't
14 make her a rigid bureaucrat. It makes her good at her job. It
15 means that she's trying to make sure that the money is spent
16 for what it's supposed to be spent for. Okay. And Hope
17 Snowden explained to you, by the way, why she couldn't talk to
18 Robert Benedict or why Robert Benedict wasn't approved as the
19 business manager for the second year. It's because he was
20 part -- that letter asking for his authorization to be the
21 business manager, was part of one of those many requested
22 budget revisions that never got approved because the numbers
23 were so messed up. So yes, you may have seen an e-mail from
24 Bob Benedict where he may have expressed frustration by the
25 fact that he wasn't hearing from Hope Snowden and that things

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Rebuttal

1 weren't moving along, but Hope Snowden explained to you why
2 that happened. It's because she couldn't do anything without
3 the proper authorization. That's why he never got approved.
4 It was part of the budget that never got approved. That's why
5 that all happened.

6 Now, defendant also talked to you about Joan Hayes,
7 where was Joan Hayes. Well, that's -- he's trying to suggest
8 the government is trying to hide something from you by not
9 calling Joan Hayes. Well, that's simply not the case. Ladies
10 and gentlemen, you sat here for over a week, and patiently
11 attentatively heard the testimony in this case. Did you really
12 need to hear from another auditor? You have the analysis done
13 by Belinda Riley, and that analysis does not rely on CASI's
14 books and records, which were always in flux. Her analysis is
15 based -- Belinda Riley's analysis is based on the bank records
16 and checks and American Express cards and invoices. Those are
17 all fixed. And her analysis traces out the expenditures to the
18 last penny. And, by the way, Belinda Riley's analysis, when
19 the defendant tried to poke some holes in it, he tried to say
20 he didn't -- she didn't take into account his personal bank
21 account. Well, his personal bank records. Well, look at
22 Government's Exhibit 111 when you go back to the jury room.
23 That's Belinda Riley's analysis of his personal bank records.
24 And the Master Card payments that he talked about so much are
25 there, page 16 of 27. She took those into account.

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Rebuttal

1 But it doesn't matter about the personal statements.
2 The personal statements are not the grant money. The grant
3 money, we heard, was all housed in the CASI accounts. It's
4 irrelevant what happens with the personal bank records and the
5 Master Card records of the defendant. We're talking here about
6 what happened to the ATP money, the grant money, that was in
7 the CASI accounts. That's the analysis in Government's exhibit
8 110. That's what you need to focus on. Feel free to check it
9 yourself.

10 Defense counsel also tried to argue to you that the
11 defendant should be given some credit because he tried to pay
12 some money back, he tried to get the grant restarted. Ladies
13 and gentlemen, if you misspend money and then decide to pay it
14 back later, you still misspent the money. You can't unring
15 that bell. It doesn't change that. This was intentional. He
16 knew what he was doing and he knew it was wrong. He didn't
17 believe the people around him. He disregarded them at every
18 turn.

19 And defense counsel's also suggested that you should
20 consider the fact that some of the things that he did, like
21 the, quote unquote, improvement to his apartment actually
22 decreased the value of his apartment, right, so that what he
23 did for the company was not personally benefiting him, right.
24 But you're going to hear, when Judge Patterson instructs you on
25 the law -- it's for him to instruct you on the law, not me --

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Rebuttal

1 but I anticipate that you're going to learn that whether or not
2 the misapplied money benefited CASI in any way is irrelevant.
3 The fact that certain expenses may or may not have benefited
4 CASI does not give the defendant a free pass under the law.

5 Now make no mistake, ladies and gentlemen, this case
6 is not about someone who tried his best to comply with the
7 rules and innocently misunderstood what was expected of him.
8 This is a case about someone who is told by several people on
9 multiple occasions what he could and could not do with the
10 grant funds, and who deliberately ignored what he didn't want
11 to hear. This is a case about someone who is so convinced that
12 he could get his way because he was so loved by the people at
13 NIST, that he didn't have to follow the rules, and that he
14 could do whatever he wanted with the grant money. And as a
15 result of his attitude, the defendant willfully disregarded
16 everyone around him and misspent the taxpayers money clearly on
17 unauthorized expenses like rent and utilities and personal
18 items, cleaning ladies, blenders, dust busters, other things,
19 things that couldn't possibly be related to research, and all
20 because he thought the rules did not apply to him. Well, the
21 defendant was wrong. That's not how this works. He can't do
22 whatever he wants, and it's time to hold had him accountable.
23 When I gave the opening statement a few days ago, I told you
24 that if you pay close attention to the evidence and follow the
25 Judge's instructions and use your common sense, you will arrive

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Rebuttal

1 at the one verdict that will be consistent with the law and the
2 evidence at the end of this case, and now all the evidence is
3 in. The case now rests in your hands. And I submit to you
4 that the government has kept its promise to you and has proven
5 this case, beyond a reasonable doubt, and the only verdict that
6 is now consistent with the law and the evidence is a verdict of
7 guilty for Daniel Karron. Thank you.

8 THE COURT: Well, it's -- thank you, Mr. Everdell.

9 It's now 12:20 and lunch is scheduled for 1:00. I
10 think I can -- the charge is not short, but it'll probably run
11 past 1:00, because I don't read a particularly fast charge. I
12 think that you want to be able to absorb what I say as I say
13 it, and for that reason I read relatively slowly. But I'll try
14 and do the best I can if you're all ready to go now. If anyone
15 needs a break, let me know. All right? Then, I'll proceed.

16 Members of the jury, we're now at that stage of the
17 trial where you will soon undertake your final function as
18 jurors. I know you will try the issues that have been
19 presented to you according to the oath which you have taken as
20 jurors, and which you promised that you will well and truly try
21 the issues in this case and render a true verdict. If you
22 follow that oath and try the issues without fear or prejudice
23 or bias or sympathy, you will arrive at a true and just
24 verdict.

25 The fact that the prosecution is brought in the name

June 11 2008

LAST Trial

Day

Ondrik and Yamatani

Present

JURY CHARGE

86BZKAR3

Charge

1 of the United States of America entitles the government to know
2 greater consideration than that accorded to any other party to
3 a litigation. By the same token, it is entitled to no less
4 consideration. All parties, whether government or individuals,
5 stand as equals at the bar of justice.

6 You have now heard all the evidence in the case, as
7 well as the final arguments of the lawyers for the parties.

8 My duty at this point is to instruct you as to the
9 law. It is your duty to accept these instructions of law and
10 apply them to the facts as you will determine them, just as it
11 has been my duty to preside over the trial and decide what
12 testimony and evidence is relevant under the law for your
13 consideration.

14 On these legal matters, you must take the law as I
15 give it to you. If any attorney has stated a legal principle
16 different from any that I state to you in my instructions, it
17 is my instructions that you must follow.

18 You should not single out any instruction as alone
19 stating the law, but you should consider my instructions as a
20 whole when you retire to deliberate in the jury room.

21 You should not, any of you, be concerned about the
22 wisdom of any rule that I state. Regardless of any opinion
23 that you may have to what the law may be or ought to be, it
24 would violate your sworn duty to base a verdict upon any other
25 view of the law than that which I give you.

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Charge

1 Now, after listening to my instructions about the law,
2 you will then determine how this case should be decided.

3 As I've said, the members of the jury are the sole and
4 exclusive judges of the facts. You decide based upon the
5 weight of the evidence; you determine the credibility of the
6 witnesses; you resolve such conflicts as there may be in the
7 testimony, and you draw whatever reasonable inferences you
8 decide to draw from the facts as you will determine them.

9 In determining the facts, you must rely upon your own
10 recollection of the evidence. What the lawyers have said in
11 their opening statements and in their closing arguments and
12 their objections or in their questions is not evidence. In
13 this connection, you should bear in mind that a question put to
14 a witness is never evidence. It is only the answer which is
15 evidence. Questions are relevant only to the extent that they
16 enable you to understand the answer. Nor is anything I may
17 have said during the trial or summations, or may say during
18 these instructions with respect to a fact matter to be taken in
19 substitution for your own independent recollection. What I say
20 is not evidence.

21 The evidence before you consists of the answers given
22 by the witnesses, the sworn testimony that they gave from the
23 stand, as you recall it, and the exhibits that were received in
24 evidence.

25 You've heard evidence in the form of stipulations that

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1 contain facts that were agreed to be true. You must accept the
2 facts in those stipulations as true.

3 The evidence does not include questions. Only the
4 answers are evidence. But you may not consider any answer that
5 I directed you to disregard or that I directed struck from the
6 record. Do not consider such answers.

7 Since you are the sole and exclusive judges of the
8 facts, I have not meant and I do not mean by my words or acts
9 to indicate any opinion as to the facts or what your verdict
10 should be. The rulings that I have made during the trial are
11 not any indication of my views of what your decision should be
12 as to whether or not the guilt of the defendant has been proven
13 beyond a reasonable doubt.

14 I also ask you to draw no inference from the fact that
15 upon occasion I asked questions of certain witnesses. These
16 questions were only intended for clarification or to expedite
17 matters, and certainly were not intended to suggest any
18 opinions on my part as to the verdict you should render or
19 whether any other witnesses may have been more credible than
20 any other witness. You are expressly to understand that the
21 Court has no opinion as to the verdict you should render in
22 this case.

23 As to the facts, ladies and gentlemen, you are the
24 exclusive judges. You have the responsibility of reviewing the
25 evidence, of weighing the credibility of the witnesses,

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1 separating the important from the unimportant, making the
2 factual determinations which bear on the guilt or lack of guilt
3 of the defendant. You are to perform the duty of finding the
4 facts without bias or prejudice as to any party.

5 It is the duty of the attorney for each side of a case
6 to object when the other side offers testimony or other
7 evidence which the attorney believes is not properly
8 admissible. Counsel also have the right and duty to ask the
9 Court to make rulings of law and request conferences in the
10 robing room or at the sidebar out of the hearing of the jury.

11 All those questions of law must be decided by me, the
12 Court. You should not show any prejudice against any attorney
13 or his or her client because the attorney objected to the
14 admissibility of evidence, asked for a conference out of the
15 hearing of the jury or asked the Court for a ruling on the law.

16 (Continued on next page)

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1 THE COURT: As I have already indicated, my rulings on
2 the admissibility of evidence do not indicate any opinion about
3 the weight or effect of such evidence. You are the sole judges
4 of the credibility of all witnesses and the weight and effect
5 of all the evidence.

6 Now, there are two types of evidence which you may
7 properly use in deciding whether a defendant is guilty or not
8 guilty.

9 One type of evidence is called direct evidence.
10 Direct evidence is a witness's testimony as to what he saw,
11 heard or observed. In other words, when a witness testifies
12 about what is known to him of his own knowledge by virtue of
13 his own senses -- what he sees, feels, touches or hears -- that
14 is called direct evidence.

15 Circumstantial evidence is evidence which tends to
16 prove one fact by proof of other facts. There is a simple
17 example of circumstantial evidence which is often used in this
18 courthouse.

19 Assume that a witness testified that when he came into
20 the courthouse this morning, the sun was shining and it was a
21 nice day.

22 Assume he testified that someone walked into the
23 courtroom with an umbrella which was dripping wet, and that
24 somebody else walked in with a raincoat which was also dripping
25 wet.

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1 Now, he does not testify that he looked out of the
2 courtroom and saw that it was raining. So there is no direct
3 evidence of that fact. But on the combination of facts which I
4 have asked you to assume, it would be reasonable and logical --
5 if you found the witness's testimony to be credible -- for you
6 to conclude that between the time he testified and the time
7 those people walked in, it had started to rain.

8 That is all there is to circumstantial evidence. You
9 infer on the basis of reason and experience and common sense
10 from an established fact the existence or the nonexistence of
11 some other fact.

12 Many facts, such as a person's state of mind, can
13 rarely be proved by direct evidence.

14 Circumstantial evidence is of no less value than
15 direct evidence; it is a general rule that the law makes no
16 distinction between direct and circumstantial evidence, but
17 simply requires that before convicting the defendant, the jury
18 must be satisfied that the government has proved the
19 defendant's guilt beyond a reasonable doubt after review of all
20 of the evidence in the case, direct and circumstantial.

21 During the trial you may have heard the attorneys use
22 the term "inference" and in their arguments they have asked you
23 to infer, on the basis of your reason, experience and common
24 sense, from one or more established facts the existence of some
25 other fact.

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1 An inference is not a suspicion or a guess. It is a
2 reasoned, logical decision to conclude that a disputed fact
3 exists on the basis of another fact that you know exists.

4 There are times when different inferences may be drawn
5 from facts whether by direct or circumstantial evidence. The
6 government may ask you to draw one set of inferences, while the
7 defense may ask you to draw another. It is for you and you
8 alone to decide what inferences you will draw.

9 The process of drawing inferences from facts in
10 evidence is not a matter of guesswork or speculation. An
11 inference is a deduction or a conclusion which you, the jury,
12 are permitted to draw -- but not required to draw -- from the
13 facts which you find to be proven by either direct or
14 circumstantial evidence. In drawing an inference, you should
15 exercise your common sense.

16 So while you are considering the evidence presented to
17 you, you are permitted to draw, from the facts which you find
18 to be proven, such reasonable inferences as would be justified
19 in the light of your experience.

20 Here, again, let me remind you that whether based upon
21 direct or circumstantial evidence, or upon logical or
22 reasonable inferences drawn from such evidence, you must be
23 satisfied of the guilt of the defendant beyond a reasonable
24 doubt before you may convict.

25 Now, how do you evaluate the credibility or

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1 believability of the witnesses? You have had an opportunity to
2 observe all of the witnesses. It is now your job to decide how
3 believable each witness was in his or her testimony. You are
4 the sole judges of the credibility of each witness and of the
5 importance of his or her testimony.

6 It must be clear to you by now that you are being
7 called upon to resolve various factual issues under the
8 indictment, in the face of very different pictures painted by
9 the government and the defense which cannot be reconciled. You
10 will now have to decide where the truth lies, and an important
11 part of that decision will involve making judgments about the
12 testimony of the witnesses you have listened to and observed.
13 In making those judgments, you should carefully scrutinize all
14 of the testimony of each witness, the circumstances under which
15 each witness testified, and any other matter in evidence which
16 may help you to decide the truth and the importance of each
17 witness's testimony.

18 Your decision on whether or not to believe a witness
19 may depend on how the witness impressed you. Was the witness
20 candid, frank and forthright? Or, did the witness seem as if
21 he or she was hiding something, or being evasive or suspect in
22 some way? How did the way the witness testified on direct
23 examination compare with how the witness testified on
24 cross-examination? Was the witness consistent in his or her
25 testimony or did he or she contradict himself or herself? Did

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1 the witness appear to know what he or she was talking about and
2 did the witness strike you as someone who was trying to report
3 his or her knowledge accurately?

4 How much you choose to believe a witness may be
5 influenced by the witness's bias. Does the witness have a
6 relationship with the government or the defendant which may
7 affect how he or she testified? Does the witness have some
8 incentive, loyalty or motive that might cause him or her to
9 shade the truth? Or does the witness have some bias,
10 prejudice, or hostility that may have caused the witness --
11 consciously or not -- to give you something other than a
12 completely accurate account of the facts he or she testified
13 to?

14 Even if the witness was impartial, you should consider
15 whether the witness had an opportunity to observe the facts he
16 or she testified about, and you should also consider the
17 witness's ability to express himself or herself. Ask
18 yourselves whether the witness's recollection of the facts
19 stands up in the light of all other evidence.

20 In other words, what you must try to do in deciding
21 credibility is to size a person up in light of his or her
22 demeanor, the explanations given, and in light of all the other
23 evidence in the case, just as you would do in any important
24 matter where you are trying to decide if a person is truthful,
25 straightforward, and accurate in his or her recollection. In

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1 deciding the question of credibility, remember that you should
2 use your common sense, your good judgment, and your experience.

3 Now, in evaluating the credibility of the witnesses,
4 you should take into account any evidence that the witness who
5 testified may benefit in some way from the outcome of this
6 case. Such an interest in the outcome creates a motive to
7 testify falsely and may sway the witness to testify in a way
8 that advances his or her own interests. Therefore, if you find
9 that any witness whose testimony you are considering may have
10 an interest in the outcome of this trial, then you should bear
11 that factor in mind when evaluating the credibility of his or
12 her testimony and accept it with great care.

13 Can I speak to counsel a minute?

14 (Continued on next page)

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1 (At the sidebar)

2 THE COURT: I noticed that there is no expert witness
3 instruction in here. It occurred to me that you both might
4 want it.

5 MR. KWOK: That's correct. We do have expert witness.
6 The government would request an instruction.

7 MR. RUBINSTEIN: I'm not requesting an instruction,
8 your Honor.

9 THE COURT: Do you object?

10 MR. RUBINSTEIN: No, I think that would be
11 obstructionist.

12 THE COURT: I will ask my clerk to just bring me down
13 one, an instruction on expert witnesses.

14 (Continued on next page)

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1 (In open court)

2 THE COURT: I'm going to go right ahead.

3 You have heard the testimony of government employees.

4 The fact that a witness may be a government employee does not
5 mean that his or her testimony is necessarily deserving of more
6 consideration or greater weight than that of an ordinary
7 witness. Also it does not mean that his or her testimony is
8 necessarily deserving of less consideration or less weight than
9 that of an ordinary witness.

10 It is your decision, after reviewing all the evidence,
11 whether to accept the testimony of the government employee and
12 to give that testimony whatever weight, if any, you find it
13 deserves.

14 The defendant has pleaded not guilty to the charges in
15 the indictment.

16 As a result of the defendant's pleas of not guilty,
17 the burden is on the prosecution to prove the defendant is
18 guilty beyond a reasonable doubt. This burden never shifts to
19 the defendant for the simple reason that the law never imposes
20 upon the defendant in a criminal case the burden or duty of
21 testifying, or calling any witnesses or locating or producing
22 any evidence.

23 The law presumes the defendant to be innocent of all
24 of the charges against him. I therefore instruct you that the
25 defendant is to be presumed by you to be innocent throughout

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1 your deliberations until such time, if it ever comes, that you
2 as a jury are satisfied that the government has proven him
3 guilty beyond a reasonable doubt.

4 The defendant began the trial here with a clean slate.
5 This presumption of innocence alone is sufficient to acquit the
6 defendant unless you as jurors are unanimously convinced beyond
7 a reasonable doubt of his guilt, after a careful and impartial
8 consideration of all of the evidence in this case. If the
9 government fails to sustain its burden, you must find the
10 defendant not guilty.

11 This presumption was with the defendant when the trial
12 began and remains with him even now as I speak to you and will
13 continue with the defendant into your deliberations unless and
14 until you are convinced that the government has proven his
15 guilt beyond a reasonable doubt.

16 The defendant, Daniel Karron, did not testify in this
17 case. Under our Constitution, a defendant has no obligation to
18 testify or to present any evidence, because it is the
19 government's burden to prove the defendant guilty beyond a
20 reasonable doubt. That burden remains with the government
21 throughout the entire trial and never shifts to the defendant.
22 The defendant is never required to prove that he is innocent.

23 You may not attach any significance to the fact that
24 the defendant did not testify. No adverse inference against
25 him may be drawn by you because he did not take the witness

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1 stand. You may not consider this against the defendant in any
2 way in your deliberations in the jury room.

3 Now, I have said that the government must prove that
4 the defendant is guilty beyond a reasonable doubt. The
5 question naturally is, "What is a reasonable doubt?" The words
6 almost define themselves. It is a doubt based upon reason and
7 common sense. It is a doubt that a reasonable person has after
8 carefully weighing of the evidence. It is a doubt which would
9 cause a reasonable person to hesitate to act in a matter of
10 importance in his or her personal life. Proof beyond a
11 reasonable doubt must, therefore, be proof of such a convincing
12 character that a reasonable person would not hesitate to rely
13 and act upon it in the most important of his own affairs.
14 Reasonable doubt is not a caprice or whim; it is not
15 speculation or suspicion. It is not an excuse to avoid the
16 performance of an unpleasant duty. And it is not sympathy.

17 In a criminal case, the burden is at all times upon
18 the government to prove guilt beyond a reasonable doubt. The
19 law does not require that the government prove guilt beyond all
20 possible doubt; proof beyond a reasonable doubt is sufficient
21 to convict. This burden never shifts to the defendant, which
22 means that it is always the government's burden to prove each
23 of the elements of the crimes charged beyond a reasonable
24 doubt.

25 If, after fair and impartial consideration of all of

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1 the evidence, you have a reasonable doubt, it is your duty to
2 acquit the defendant. On the other hand, if after fair and
3 impartial consideration of all the evidence, you are satisfied
4 of the defendant's guilt beyond a reasonable doubt, you should
5 vote to convict.

6 Under your oath as jurors you are not to be swayed by
7 sympathy. You are to be guided solely by the evidence in this
8 case, and the crucial, hardcore question that you must ask
9 yourselves as you sift through the evidence is: Has the
10 government proven the guilt of the defendant beyond a
11 reasonable doubt?

12 It is for you alone to decide whether the government
13 has proven that the defendant is guilty of the crime charged
14 solely on the basis of the evidence and subject to the law as I
15 charge you. It must be clear to you that once you let fear or
16 prejudice or bias or sympathy interfere with your thinking,
17 there is a risk that you will not arrive at a true and just
18 verdict.

19 If you have a reasonable doubt as to the defendant's
20 guilt, you should not hesitate for any reason to find a verdict
21 of acquittal. But on the other hand, if you should find that
22 the government has met its burden of proving the defendant's
23 guilt beyond a reasonable doubt, you should not hesitate
24 because of sympathy or any other reason to render a verdict of
25 guilty.

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1 The question of possible punishment of the defendant
2 is of no concern to the jury and should not, in any sense,
3 enter into or influence your deliberations. The duty of
4 imposing a sentence on any convicted defendant rests
5 exclusively upon the court -- that is, upon me. Your function
6 is to weigh the evidence in the case and to determine whether
7 or not the defendant is guilty beyond a reasonable doubt,
8 solely on the basis of such evidence. Under your oath as
9 jurors, you cannot allow a consideration of the punishment
10 which may be imposed upon the defendant, if he is convicted, to
11 influence your vote in any way, or in any sense to enter into
12 your deliberations.

13 Now, with these preliminary instructions in mind, let
14 us turn to the charge against the defendant, as contained in
15 the indictment. I remind you that an indictment itself is not
16 evidence. It merely describes the charge made against the
17 defendant. It is an accusation. It may not be considered by
18 you as any evidence or proof of the guilt of the defendant.
19 Only the evidence or the lack of evidence presented here at
20 trial before you is relevant to that issue.

21 The defendant, Daniel Karron, is formally charged in
22 an indictment which contains one count. Before you begin your
23 deliberations, you will be provided with a copy of the
24 indictment containing the charge.

25 Count One of the indictment charges that from at least

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1 in or about October 2001, up through and including in or about
2 June 2003, Daniel B. Karron, the president and chief technical
3 officer of a company called Computer Aided Surgery, Inc.
4 (CASI), intentionally misapplied \$5,000 and more in the care,
5 custody and control of CASI, while it was the beneficiary of a
6 federal grant of more than \$10,000 a year from the National
7 Institute of Standards and Technology, a federal entity.

8 The indictment reads as follows:

9 Count One. The grand jury charges:

10 1. From at least in or about October, 2001, up
11 through and including in or about June 2003, in the Southern
12 District of New York and elsewhere, Daniel B. Karron, the
13 defendant, being an agent of an organization, which
14 organization received in any one-year period benefits in excess
15 of \$10,000 under a federal program involving a grant, contract,
16 subsidy, loan, guarantee, insurance and other form of federal
17 assistance, unlawfully, willfully and knowingly did embezzle,
18 steal, obtain by fraud, and otherwise without authority,
19 knowingly convert to the use of -- let me just go back a little
20 bit -- obtained by fraud and otherwise without authority
21 knowingly convert to the use of persons other than the rightful
22 owner, and intentionally misapplied property valued at \$5,000
23 and more that was owned by and was under the care, custody and
24 control of such organization, to wit, Karron, who was the
25 president and chief technical officer of Computer Aided Surgery

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1 Inc., (CASI), knowingly misapplied more than \$5,000 of funds
2 under the care, custody and control of CASI, which received
3 more than \$10,000 in federal funds during a one-year period
4 from the Advanced Technology Program administered by the
5 National Institute of Standards and Technology.

6 And it cites Title 18 United States Code, Section 666.

7 Title 18 United States Code, Section 666, reads in
8 pertinent part as follows: "Theft or bribery concerning
9 programs receiving federal funds.

10 (a) Whoever, if circumstance described in subsection
11 (b) of this section exists --

12 (A) Embezzles, steals, obtains by fraud, or otherwise
13 without authority knowingly converts to the use of any person
14 other than the rightful owner or intentionally misapplies,
15 property that is valued at \$5,000 or more, and is owned by, or
16 is under the care, custody, or control of such organization,
17 government, or agency, is guilty of a crime.

18 (b) The circumstance referred to in subsection (a) of
19 this section is that the organization, government, or agency
20 receives, in any one-year period, benefits in excess of \$10,000
21 under a federal program involving a grant, contract, subsidy,
22 loan, guarantee, insurance, or other form of federal
23 assistance.

24 (c) This section does not apply to bona fide salary,
25 wages, fees, other other compensation paid, or expenses paid or

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1 reimbursed, in the usual course of business.

2 In order to sustain its burden of proof with respect
3 to the allegation in Count one, the government must prove
4 beyond a reasonable doubt the following five elements:

5 First, at the time alleged in the indictment, the
6 defendant was an agent of Computer Aided Surgery, Inc., or
7 CASI;

8 Second, in a one-year period, CASI received a federal
9 grant in excess of \$10,000;

10 Third, during that one-year period, the defendant
11 without authority intentionally misapplied the grant money;

12 Fourth, the misapplied grant money was under the care,
13 custody, or control of, CASI;

14 Fifth, the value of the money intentionally misapplied
15 by defendant was at least \$5,000.

16 Now, let us separately consider these five elements.

17 The first element the government must prove beyond a
18 reasonable doubt is that at the time alleged in the indictment,
19 the defendant was an agent of CASI.

20 The term "agent" means a person authorized to act on
21 behalf of an organization. Employees, partners, directors,
22 officers, managers and representatives are all agents of an
23 organization.

24 Second element the government must prove beyond a
25 reasonable doubt is that in a one-year period, CASI received

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1 federal benefits in excess of \$10,000.

2 To prove this element, the government must establish
3 that CASI received, during a one-year period, benefits in
4 excess of \$10,000 under a federal program involving a grant,
5 contract, subsidy, loan, guarantee, insurance, or some other
6 form of federal assistance.

7 The one-year period must begin no more than 12 months
8 before the defendant committed the acts charged in the
9 indictment and must end no more than 12 months after those
10 acts. You can choose any period of federal funding you want as
11 long as you unanimously find that the acts of misapplication
12 charged in the indictment occurred in that one-year period.

13 The third element the government must prove beyond a
14 reasonable doubt is that the defendant without authority
15 intentionally misapplied money. To intentionally misapply
16 money means to use money under the control of CASI knowing that
17 such use is unauthorized or unjustifiable or wrongful.
18 Intentional misapplication includes the wrongful use of the
19 money for a purpose the defendant knew was unauthorized, even
20 if such use benefited CASI in some way.

21 In this case, to intentionally misapply money means to
22 intentionally apply the grant money received by CASI in a
23 manner which the defendant knew was unauthorized under the
24 terms and conditions of the grant. Misapplication of money,
25 however, does not apply to bona fide salary, wages, fringe

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1 benefits, or other compensation paid, or expenses paid or
2 reimbursed, in the usual course of business.

3 As I said, the government must prove beyond a
4 reasonable doubt that the defendant acted intentionally in
5 misapplying grant money. To find that the defendant acted
6 intentionally, you must be satisfied beyond a reasonable doubt
7 that the defendant acted deliberately and purposefully. That
8 is, the defendant's misapplication must have been the product
9 of the defendant's conscious objective to spend the money for
10 an unauthorized purpose, rather than the product of a mistake
11 or accident or some other innocent reason.

12 The fourth element that the government must prove
13 beyond a reasonable doubt is that the grant money that was
14 intentionally misapplied was in the care, custody, or control
15 of, CASI. Although the words "care," "custody," and "control"
16 have slightly different meanings, for the purposes of this
17 element, they express a similar idea. All that is necessary is
18 that CASI had control over and responsibility for the grant
19 money.

20 The fifth and final element the government must prove
21 beyond a reasonable doubt is that the value of the
22 intentionally misapplied money was at least \$5,000.

23 The word "value" means face, par or market value, or
24 cost price, either wholesale or retail, whichever is greater.
25 "Market value" means the price a willing buyer would pay a

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1 willing seller at the time the property was intentionally
2 misapplied.

3 You may aggregate or add up the value of the money
4 intentionally misapplied from a series of acts by the defendant
5 to meet this \$5,000 requirement, so long as you find that each
6 act of intentional misapplication was part of a single scheme
7 by the defendant to misapply grant money under the care,
8 custody, and control of CASI.

9 The government does not have to prove that the
10 particular money misapplied by the defendant was the money
11 received by CASI as a federal grant. In other words, it is not
12 necessary for the government to show that the intentionally
13 misapplied money was traceable to the actual federal grant
14 received by the organization. Thus, if the government
15 establishes that CASI received more than \$10,000 in federal aid
16 during a one-year period, and that, during that period, the
17 defendant misapplied funds valued at more than \$5,000 under the
18 care, custody, and control of CASI, the government will have
19 satisfied its burden with respect to this element. Money is
20 fungible, and the government need not trace the \$5,000 or more
21 alleged to be intentionally misapplied back to the federal
22 grant.

23 In addition to the elements of the offenses that I
24 have explained, you must consider whether any act in
25 furtherance of the crime charged in the indictment occurred

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1 within the Southern District of New York. As I have instructed
2 you, the Southern District of New York includes Manhattan and
3 the Bronx.

4 I should note that on this issue -- and this issue
5 alone -- the government need not prove venue beyond a
6 reasonable doubt, but only by a mere preponderance of the
7 evidence. Thus, the government has satisfied its venue
8 obligations if you conclude that it is more likely than not
9 that any act in furtherance of the crime charged occurred in
10 the Southern District of New York.

11 You have heard evidence during the trial that
12 witnesses have discussed the facts of the case and their
13 testimony with the lawyers before the witnesses appeared in
14 court.

15 Although you may consider that fact when you are
16 evaluating a witness's credibility, I should tell you that
17 there is nothing either unusual or improper about a witness
18 meeting with lawyers before testifying so that the witness can
19 be aware of the subjects he or she will be questioned about,
20 focus on those subjects and have the opportunity to review
21 relevant exhibits before being questioned about them. Such
22 consultation helps conserve your time and the court's time. In
23 fact, it would be unusual for a lawyer to call a witness
24 without such consultation.

25 Again, the weight you give to the fact or the nature

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1 of the witness's preparation for his or her testimony and what
2 inferences you draw from such preparation are matters
3 completely within your discretion.

4 Now, you have heard testimony from what we call expert
5 witnesses. An expert witness is a person who by education or
6 experience has acquired learning or experience in a science or
7 a specialized area of knowledge. Such witnesses are permitted
8 to give their opinions as to relevant matters in which they
9 profess to be expert, and give their reasons for their
10 opinions.

11 Expert testimony is presented to you on the theory
12 that someone who is experienced in the field can assist you in
13 understanding the evidence or in reaching an independent
14 decision on the facts.

15 Now, your role in judging the credibility applies to
16 experts as well as to other witnesses. You should consider the
17 expert's opinions that were received in evidence in this case
18 and give them as much or as little weight as you think they
19 deserve.

20 If you should decide that the opinion of an expert is
21 not based on sufficient education or experience, or on
22 sufficient data, or if you should conclude that the
23 trustworthiness or credibility of an expert is questionable for
24 any reason, or if the opinion of the expert was outweighed in
25 your judgment by other evidence in the case, then you might

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1 disregard the opinion of the expert entirely or in part.

2 On the other hand, if you find the opinion of the
3 expert was based on sufficient data, education and experience,
4 and other evidence, and does not give you reason to doubt his
5 conclusions, you would be justified in placing great reliance
6 on his testimony.

7 If you conclude that other persons may have been
8 involved in criminal acts charged in the indictment, you may
9 not draw any inference, favorable or unfavorable, toward either
10 the government or the defendant from the fact that those
11 persons are not named as defendants in this indictment or are
12 not present at this trial.

13 In addition, you should not speculate as to the
14 reasons that individuals other than the defendant are not
15 defendants in this trial. Those matters are wholly outside
16 your concern and have no bearing on your function as jurors in
17 this trial.

18 Both the government and the defendant have the same
19 power to subpoena witnesses to testify on their behalf. If a
20 potential witness could have been called by the government or
21 by the defendant and neither party called the witness, then you
22 may draw the conclusion that the testimony of the absent
23 witness might have been unfavorable to the government or to the
24 defendant or to both parties.

25 On the other hand, it is equally within your province

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1 to draw no inference at all from the failure of a party to call
2 a witness.

3 You should remember that there is no duty on either
4 side to call a witness whose testimony would be merely
5 cumulative of testimony already in evidence, or who would
6 merely provide additional testimony to facts already in
7 evidence.

8 You have heard reference, in the testimony and in the
9 arguments of defense counsel in this case, about the fact that
10 certain investigative techniques were not used by law
11 enforcement authorities. There is no legal requirement that
12 the government prove its case through any particular means.
13 While you are to carefully consider the evidence presented by
14 the government, you are not to speculate as to why they used
15 the techniques they did, or why they did not use other
16 techniques. The government is not on trial, and law
17 enforcement techniques are not your concern.

18 Your concern is to determine whether or not, based on
19 the evidence or lack of evidence, the guilt of the defendant
20 has been proven beyond a reasonable doubt.

21 There is testimony in this case of the previous good
22 character of the defendant. This testimony is not to be taken
23 by you as the witnesses' opinion as to whether the defendant is
24 guilty or not guilty. That question is for you alone to
25 determine. Indeed, some of the character witnesses testified

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1 that they had no direct, personal knowledge of the facts and
2 circumstances which were the focus of this case. You should
3 consider evidence of good character together with all other
4 facts and all the other evidence in determining whether the
5 prosecution has sustained its burden of proving the defendant's
6 guilt beyond a reasonable doubt. Evidence of good character
7 may in itself create a reasonable doubt where without such
8 evidence no reasonable doubt exists. But if, from all the
9 evidence, you are satisfied beyond a reasonable doubt that the
10 defendant is guilty, a showing that the defendant previously
11 enjoyed a reputation of good character does not justify or
12 excuse the offense, and you should not acquit the defendant
13 merely because you believe that he had been a person of good
14 repute.

15 Some of the exhibits that were admitted into evidence
16 were charts. These charts were introduced basically as
17 summaries. They are not direct evidence. They are summaries
18 of the evidence, and are admitted as aids to you. They are not
19 in and of themselves any evidence. They are intended only to
20 be of assistance to you in considering the evidence during your
21 deliberations.

22 In presenting the evidence which you have heard, it is
23 clearly easier and more convenient to utilize summary charts
24 than to place all of the relevant documents in front of you.
25 It is up to you to decide whether those charts fairly and

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Charge

1 correctly present the information in the testimony and the
2 documents admitted in evidence. The charts are not to be
3 considered by you as direct proof of anything. They are merely
4 graphic demonstrations of what the underlying testimony and
5 documents are.

6 To the extent that the charts conform with what you
7 determine the underlying evidence to be, you should accept
8 them. But one way or the other, realize that the chart is not
9 in and of itself direct evidence. They are merely visual aids.
10 They are nothing more.

11 You are about to go into the jury room and begin your
12 deliberations. If during those deliberations you want to see
13 or hear any of the exhibits, they will be sent to you in the
14 jury room upon question. If you want any of the testimony
15 read, that can also be done. But please remember that it is
16 not always easy to locate what you want, so try and be as
17 specific as you possibly can in requesting exhibits or portions
18 of the testimony which you may want.

19 Your requests for exhibits or testimony -- in fact any
20 communication with the court -- should be made to me in
21 writing, signed by your foreperson, and given to one of the
22 marshals. I will respond to any questions or requests you have
23 as promptly as possible either in writing or by having you
24 return to the courtroom so I can speak to you in person. In
25 any event, do not, in any note or otherwise, tell me or anyone

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Charge

1 prepared a form of verdict. I am asking that the verdict form
2 be signed by the foreperson and filed with the court. When you
3 have unanimously agree upon your verdict, then the foreperson
4 will fill it in and sign it, and you tell the marshal you have
5 reached a verdict. Then you will be asked to come back into
6 open court and the clerk will ask whether your verdict is
7 unanimous.

8 It's a simple verdict form. Please hand it out. The
9 verdict form form reads as follows: " Count 1: With respect
10 to Count One of the indictment, S2 07 Crim. 541 (RPP), how do
11 you find the defendant Daniel B. Karron?" And it states
12 guilty, not guilty and a space for each answer. That's it.

13 Just because of the phraseology, there is only one
14 count in the indictment. There is no other charge against the
15 defendant. So don't draw the conclusion there must be other
16 charges.

17 Now, each juror is entitled to his or her opinion;
18 each should, however, exchange views with his or her fellow
19 jurors. That is the very purpose of jury deliberation -- to
20 discuss and consider the evidence; to consider the arguments of
21 fellow jurors; to present your individual views; to consult
22 with one another; and to reach an agreement based solely and
23 entirely on the evidence or the lack of evidence -- if you can
24 do sought without violation to your own individual judgment.

25 Each of you must decide the case for yourself, after

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Charge

1 consideration with your fellow jurors of the evidence in the
2 case.

3 But you should not hesitate to change an opinion
4 which, after discussion with your fellow jurors, appears
5 incorrect.

6 However, if, after carefully considering all of the
7 evidence and the arguments of your fellow jurors, you hold a
8 conscientious view that differs from the others, you are not to
9 change your position simply because you are outnumbered. If
10 they do not convince you that your position is incorrect, you
11 shall adhere to your position regardless of the lateness of the
12 hour or any personal inconvenience it may cause you.

13 Your final vote must reflect your conscientious belief
14 as to how the issue should be decided.

15 Now, I have virtually finished with my charge and my
16 instructions to you and I want to thank you for your patience
17 and attentiveness. I will send a copy of the charge in to you
18 so that you can use it during your deliberation. Again, please
19 remember that no single part of this charge is to be considered
20 in isolation. You are not to consider any one aspect of this
21 charge out of context. The entire charge is to be considered
22 as an integrated statement and to be taken together.

23 Now, I say this not because I think it's necessary but
24 it is the tradition of this court. I advise the jurors to be
25 polite and respectful to each other, as I am sure you will be

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Charge

1 in the course of your deliberations, so that each juror may
2 have his or her position made clear to all the others.

3 The foreperson has no greater authority than any other
4 juror but will be responsible for signing all communications to
5 the court and for handing them to the marshal during
6 deliberations. You should elect one person to act as
7 foreperson at the outset of your deliberations. I sometimes
8 suggest that it is easier to elect Juror 1, that is Ms. Young,
9 but sometimes Juror 1 doesn't want to act as foreperson. So
10 you all can elect whomever you want. That is your prerogative.
11 The manner in which the jury conducts its deliberations, of
12 course, is completely within your discretion. You may follow
13 any procedure that you choose, provided that each juror is
14 presented with ample opportunity to express his or her view.
15 That way when you do reach a verdict you will know that it is a
16 just one, made with the full participation of all the jurors
17 and that you have faithfully discharged your oath. I remind
18 you once again that your duty is to act without fear or favor
19 and that you must decide the issues on trial based solely on
20 the evidence and my instructions on the law.

21 Thank you very much. I just want a word with counsel
22 to see if I misread any part of the charge.

23 (Continued on next page)

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86B7KAR4

Charge

1 else how you or any group of you have voted or propose to vote
2 on the issue of the defendant's guilt until after a unanimous
3 verdict is reached. In other words, do not tell me or anyone
4 else what your numerical division is -- how many think one way
5 and how many think another -- if you are divided at any point
6 on how to decide the case because until you have reached a
7 verdict, you have no verdict.

8 I am sending a copy of the indictment into the jury
9 room for you to have during your deliberations. You may use it
10 to read the crime with which the defendant is charged with
11 committing. You are reminded, however, that an indictment is
12 merely an accusation and is not to be used by you of any proof
13 of the conduct charged.

14 As already explained in these instructions, the
15 government, to prevail on the charge in the indictment must
16 prove the essential elements of that count in the indictment
17 beyond a reasonable doubt.

18 If it succeeds, your verdict should be guilty as to
19 that count; if it fails, it should be not guilty as to that
20 count. To report a verdict, your vote must be unanimous.

21 Your function is to weigh the evidence in the case and
22 determine whether or not the defendant is guilty of the count
23 in the indictment solely on the basis of such evidence.

24 Now, to aid you in your deliberations, and so that a
25 proper record can be made of your verdict, the court has

June 11 2008 LAST
Trial Day

Ondrik and Yamatani Present

JURY SENT FOR
DELIBERATION,
ALTERATES
EXCUSED

86B7KAR4

Charge

1 (At the sidebar)

2 THE COURT: Any objections?

3 MR. RUBINSTEIN: No, your Honor, not by the defense.

4 MR. KWOK: No, your Honor.

5 THE COURT: OK.

6 (Continued on next page)

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Charge

1 (In open court)

2 THE COURT: I think the alternates will be coming back
3 in. I will excuse them on the record. I don't think there is
4 any record that the two alternates have been excused, and I
5 think I have to do it.

6 MR. RUBINSTEIN: Can we approach for one moment?

7 THE COURT: Sure.

8 (At the sidebar)

9 MR. RUBINSTEIN: Judge, I know you usually discharge
10 alternates jurors, but am I correct that Juror 8 is supposed to
11 leave on Friday?

12 THE COURT: Not available Monday.

13 MR. RUBINSTEIN: Not available Monday.

14 THE COURT: So, you have two and a half days.

15 MR. RUBINSTEIN: I think we should be all right. All
16 right.

17 MR. KWOK: I think we should be fine.

18 MR. RUBINSTEIN: If they promise not to retry the
19 case.

20 THE COURT: OK. All right.

21 (Continued on next page)

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1 (In open court)

2 THE COURT: Well, at this time it's my duty to excuse
3 alternate jurors, I guess you were 3 and 4, Mr. Richburg and
4 Ms. Ippolito. You may not realize that one of my duties is to
5 make -- well, I do think you realize because of the comment I
6 made earlier in the trial about making sure the jurors weren't
7 asleep -- but one of my duties is to make sure that jurors are
8 paying attention. And I have noticed that both of were you
9 paying attention throughout the trial and were very attentive,
10 more than just paying attention, and I really want to thank you
11 for your service.

12 In civil cases we allow alternates to sit on the jury,
13 but in criminal cases there is a requirement that there be 12
14 jurors and not more. So, at this time I want to excuse you and
15 thank you for your public service. I appreciate it.

16 And what Mr. Rubinstein said in his summation about
17 public service of jurors is I think very accurate. I think he
18 may have picked that up from me in a previous trial we had, but
19 in any event I really regard it as very high public service,
20 and I will give the jury a more full explanation of why I think
21 that when the trial is over.

22 So, Mr. Richburg and Ms. Ippolito, are excused.

23 (Alternates excused)

24 Then I have the duty of asking Mr. Monteguedo to swear
25 in the marshal now. I usually tell the jury that they should

June 11 2008

LAST Trial

Day

Ondrik and

Yamatani

Present

JURY

CALLS

BACK

EXHIBITS

86B7KAR4

1 listen closely to this, because you will get a kick out of it.
2 I think it was written well over a hundred years ago, let's
3 say, and some of the language is a little out of date.

4 (Marshal sworn)

5 THE COURT: All right. The jury is excused to
6 commence your deliberations and to have lunch. That's probably
7 number one, have lunch. I hope it's there.

8 DEPUTY COURT CLERK: It's downstairs. I have to go
9 and get it.

10 THE COURT: He has to go and get it.

11 (Jury retires to deliberate at 1:22 p.m.)

12 THE COURT: I want to thank counsel for their
13 courteousness and professionalism during the trial. I
14 appreciate it very much. Good luck to both sides, and I will
15 be here.

16 MR. RUBINSTEIN: Thank you, your Honor.

17 MR. KWOK: Thank you, your Honor.

18 (Luncheon recess)

19 (Continued on next page)

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86B7KAR4

1 AFTERNOON SESSION

2 2:25 p.m.

3 (Jury not present)

4 THE COURT: I understand we have some sort of dispute.

5 As has been related to me, the defense wants the indictment
6 sent in total without redaction, and the government wants it
7 sent in with the forfeiture allegation redacted.

8 MR. RUBINSTEIN: That's correct.

9 THE COURT: That's the issue?

10 MR. RUBINSTEIN: Yes, your Honor.

11 THE COURT: Obviously they're not supposed to
12 determine the forfeiture allegations, so I would say what about
13 my just sending it in and then with a note saying here is the
14 indictment, you will note that there are forfeiture allegations
15 but those allegations are not before you and not matters that
16 you have to concern yourselves with, something like that? How
17 does that deal with it?

18 MR. KWOK: I think an instruction along those lines
19 would suffice. Our only concern is that there is a mention in
20 paragraph 2A of at least \$390,000. They may get confused as to
21 where that number came from. And obviously they haven't been
22 instructed about any forfeiture allegations in the indictment,
23 so our only concern is that it will cause more confusion than
24 necessary, and so an instruction along those lines --

25 THE COURT: I can understand why you feel it should be

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1 redacted, but the defense does not want to redact it.

2 You don't want it redacted?

3 MR. RUBINSTEIN: No, your Honor. I don't have a
4 problem with your Honor's --

5 THE COURT: Well, it's in the indictment, so let me
6 fashion a note.

7 "Here is a copy of the indictment. You will note it
8 contains a forfeiture allegation. Those allegations are
9 irrelevant to your decision" --

10 MR. KWOK: -- "and you should not consider it in any
11 way in your deliberations."

12 THE COURT: Is that all right?

13 MR. RUBINSTEIN: Yes.

14 MR. EVERDELL: Your Honor, also I think it may be even
15 clearer if we say, "You will note there is a forfeiture
16 allegation on page 2 of the indictment."

17 THE COURT: Well, I've gone too far now.

18 Here is the note. I have it it marked as Court
19 Exhibit 1.

20 DEPUTY COURT CLERK: No, that's going to be Court
21 Exhibit 3.

22 THE COURT: Court Exhibit 3.

23 DEPUTY COURT CLERK: Court Exhibit one was the
24 exhibit. Court Exhibit 2 was the charge. This will be 3. And
25 the indictment is Court Exhibit 4.

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1 THE COURT: Hand it to counsel before we send it in.

2 MR. KWOK: That's satisfactory to the government
3 government. Thank you, your Honor.

4 THE COURT: All right, Mr. Rubinstein?

5 MR. RUBINSTEIN: That's fine.

6 THE COURT: OK.

7 All right.

8 (Time noted 3:25; jury not present)

9 THE COURT: They want all of Benedict's testimony?
10 And Exhibit 110, 111, 114 and 115.

11 MR. RUBINSTEIN: All I would say is those are all
12 summaries.

13 THE COURT: Well, they're the audit, aren't they? The
14 government isn't here. Oh, they are.

15 THE COURT: Have you seen the note?

16 MR. KWOK: We have, your Honor.

17 MR. EVERDELL: We're pulling the exhibits now.

18 THE COURT: Maybe I better read it into the record.

19 This is Court Exhibit 5, received from the jury at
20 3:12, and signed by Ms. Young. It says.

21 "1. Bob Benedict's testimony.

22 "2. Number 110.

23 "3. Number 111.

24 "4. 114

25 "5. 115.

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1 "6. Original budget.

2 "7. Revised approved budget.

3 "8. Nonapproved subsequent budget revisions."

4 My recollection is we only have some of the budget
5 revisions, not all of the budget revisions. Am I wrong?

6 MR. EVERDELL: No, I think we have the revised budget
7 submissions that were not approved. I think what your Honor
8 may be referring to is the quarterly financial reports.

9 THE COURT: Oh, that's right.

10 MR. EVERDELL: But the exhibits, I think we have the
11 exhibits that they want.

12 THE COURT: Well, we have to go through the testimony
13 of Benedict.

14 MR. KWOK: How does your Honor like to proceed with
15 the testimony? Do we do a read-back?

16 THE COURT: Whenever you've got anything ready, let's
17 send it in. It's 3:25. They've got to be kept busy. We can't
18 hold back.

19 MR. RUBINSTEIN: We have to redact if there is any
20 objections.

21 THE COURT: I don't remember if there is much in
22 Benedict's direct or cross that requires redaction, but maybe
23 there is.

24 MR. RUBINSTEIN: I don't either, but maybe there is.

25 THE COURT: You have to cut out the pages where the

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1 jury wasn't present. But as far as redaction goes, there were
2 very few objections in either direct or cross, I believe.

3 So, let's divide it up so we all don't look at the
4 same copy. Do you want my copy?

5 DEPUTY COURT CLERK: Defense counsel doesn't have a
6 copy of the copy of the transcript.

7 THE COURT: What I'm talking about is dividing up the
8 duties, so one of you goes through page so and so and the other
9 goes through such and such.

10 MR. RUBINSTEIN: If the court will give us their
11 transcript, I will tell the government what pages I have.

12 THE COURT: What about before we get started on that,
13 what about the other exhibits, do we have those?

14 MR. KWOK: We do, your Honor.

15 MR. EVERDELL: Your Honor, how do we propose to mark
16 what they are for the jury? I'm not sure the jury is going to
17 know that --

18 THE COURT: I will give them a note.

19 MR. EVERDELL: We just want to be able to identify
20 which numbers.

21 THE COURT: In response to your note, I'm sending you
22 in government's exhibits, Bob Benedict's testimony, the revised
23 approved budget, and then I will identify them by exhibit
24 number. So it's clear, so you make a clear record of what is
25 and isn't sent in.

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1 MR. EVERDELL: I just want to be sure they know which
2 is which.

3 THE COURT: Have you got 110, 111, 114 and 115?

4 MR. EVERDELL: We have those, your Honor.

5 DEPUTY COURT CLERK: Do you want to send those three
6 exhibits in, Judge?

7 THE COURT: I do. I want the other ones too.

8 DEPUTY COURT CLERK: Right. I just don't know if you
9 want to send them all together or --

10 THE COURT: As many as they have ready.

11 DEPUTY COURT CLERK: 110, 111, 114 and 115, Judge, we
12 will send those?

13 THE COURT: What about the budget, do we have those?

14 MR. EVERDELL: Yeah, I'm just marking them "original
15 approved budget" for Government's 14 and "revised approved
16 budget" for 22, and "unapproved budget" for Government's
17 Exhibits 31, 32, 33, 34, 35 and 36. Or "unapproved budget
18 requests". And I will put the numbers down, 31, 32 ...

19 The unapproved budget requests are 31 through 36. And
20 I am putting sticky notes on them.

21 Actually if you have a rubberband we can rubberband
22 them together.

23 THE COURT: Is there one nonapproved budget or two
24 nonapproved budget?

25 MR. EVERDELL: It's six.

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1 THE COURT: Oh, I've got it.

2 MR. EVERDELL: So, I will hand these up to Robert.

3 THE COURT: To the jurors, I will read the note I
4 propose to send in.

5 "In response to your note, here are Exhibits 110, 111,
6 114 and 115; original budget, GX14; revised budget approved,
7 GX22; Nonapproved subsequent budget, GX31, 32, 33, 34, 35, 36.

8 "We are working on Mr. Benedict's testimony."

9 MR. KWOK: That's fine with the government. I
10 actually have the lines ready to be redacted for Mr. Benedict's
11 testimony, if your Honor would like to --

12 THE COURT: It's all redacted?

13 MR. KWOK: I think there are only two places that need
14 redaction.

15 THE COURT: Well, why don't we send this in. I don't
16 know how long it will take to get agreement on the redactions.
17 And I will send this note in with it, if there is no objection
18 by counsel. It's Court Exhibit 6.

19 MR. KWOK: That's fine. Thank you, your Honor.

20 THE COURT: While Mr. Monteguedo is doing that, let's
21 see what we can do on Mr. Benedict's testimony.

22 MR. KWOK: Your Honor, I believe Mr. Benedict's
23 testimony starts at page 960 on the transcript.

24 THE COURT: Mr. Rubinstein has my copy, so I'm not
25 sure. Have we given him the pages of proposed deletions?

86B7KAR4

1 Mr. Rubinstein?

2 MR. RUBINSTEIN: Yes, your Honor. I'm working on the
3 cross.

4 THE COURT: Were you only doing direct?

5 MR. KWOK: I was doing direct, but I actually went
6 through the whole thing.

7 THE COURT: Mr. Rubinstein, I don't know if it will
8 help you, but Mr. Kwok has indicated where he thinks the
9 redactions are. How are we coming?

10 MR. KWOK: Getting there.

11 THE COURT: How many pages do we have to read, or is
12 it better to redact it?

13 MR. RUBINSTEIN: No, I think it's better -- there are
14 not that many, but there are a lot more than the government
15 suggests.

16 I'm almost there. I just want to show the government
17 some that are not major but that I ...

18 THE COURT: Sorry?

19 MR. RUBINSTEIN: They're not major, but let me show
20 the government the portions that I think could be redacted.

21 We are in agreement.

22 THE COURT: Well, how are we going to make the
23 redaction? Read it? How long is it?

24 MR. KWOK: It's quite long actually. I think our
25 preference is to to send in a copy and just redact using a

86B7KAR4

1 black highlighter of some sort.

2 MR. RUBINSTEIN: Most of the redactions, Judge, are
3 just a few lines, so I wouldn't have a problem with that.

4 THE COURT: Then let's do it that way. Let's get it
5 started.

6 MR. RUBINSTEIN: The only thing I would suggest is --

7 THE COURT: Bring back a final so Mr. Rubinstein can
8 see them.

9 MR. KWOK: Certainly.

10 THE COURT: So he can see that you made them
11 correctly.

12 Let's move, otherwise they may make a decision.

13 MR. EVERDELL: We're going to make a photocopy of your
14 Honor's bigger version so it's easy to read. We will redact it
15 and bring it back.

16 THE COURT: You are using my copy?

17 MR. EVERDELL: Of the transcript.

18 THE COURT: Do you have to make copies?

19 MR. EVERDELL: We can make copies or just instruct the
20 jury not to peel off the white tape.

21 MR. RUBINSTEIN: That's fine. Instruct them not to
22 peel off the white tape.

23 THE COURT: Can I have my note back?

24 I have the note. Are you ready? Counsel, are you
25 ready?

86B7KAR4

1 MR. KWOK: OK. Your Honor, I think we have an
2 agreement. The transcript is redacted with the approval of
3 Mr. Rubinstein and the government, and I think we also should
4 send in the blow-ups, because they are the actual exhibits,
5 these big boards, Exhibits 114 and 115.

6 THE COURT: I sent in 114 and 115.

7 MR. KWOK: I understand, but as I understand it these
8 are the ones that are actually marked.

9 THE COURT: Well, I gave what you gave me which had
10 things marked 114 and 115. I don't know whether Mr. Rubinstein
11 consents to this.

12 MR. RUBINSTEIN: If they have 114 and 115, I don't
13 think they need the blow-up version.

14 THE COURT: If we started off that way, I think they
15 would be entitled to it, but I don't think we ought to send
16 duplicate exhibits in.

17 MR. KWOK: OK, that's fine. Can I hand up the
18 redacted transcript?

19 THE COURT: All right. Then I have drafted a note to
20 the jurors saying, "Here is the testimony of Mr. Benedict that
21 you requested." And I signed that note, and below that I have
22 written in, "You are ordered not to remove the white tape."

23 Is that what you want?

24 MR. KWOK: I think that's fine. We also, after we ran
25 out of the white tape, we used a black marker. I suppose if

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1 you hold it up, you can really see it under the light, but I
2 don't know whether an additional instruction is necessary to
3 that effect.

4 THE COURT: What does he want me to say? "Or the
5 black line"? I can't tell them to remove the black lines.

6 MR. KWOK: "Or attempt to see through the black line".

7 MR. RUBINSTEIN: I think they will understand it,
8 Judge. There are no smoking guns that have been redacted; it's
9 just objection sustained.

10 THE COURT: It's adequate, "You are not to remove the
11 white tapes"? Is that adequate?

12 MR. KWOK: Fine.

13 THE COURT: Then the note is Exhibit 7. The
14 transcript will be Court Exhibit 8.

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June 11 2008

LAST Trial

Day

Ondrik and Yamatani

Present

JURY

VERDICT

86B7KAR4

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(5:25; jury not present)

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4

THE COURT: Mr. Monteguedo informs me that the marshals have indicated that the jury has a verdict.

5

Bring the jury in.

6

(Jury present)

7

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THE COURT: Please be seated. Ladies and gentlemen, Mr. Monteguedo reports that the marshals have reported that you have reached a verdict, and I will ask Mr. Monteguedo to take the verdict.

11

12

DEPUTY COURT CLERK: Ladies and gentlemen of the jury, please answer to your presence as your name is called.

13

(Jury roll called; jury present)

14

DEPUTY COURT CLERK: Foreperson please stand.

15

16

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18

As to Count One, with respect to Count One of indictment, S2 07 Crim. 541 (RPP), how do you find the defendant Daniel B. Karron. Did you answer guilty or not guilty?

19

THE FOREPERSON: Guilty.

20

DEPUTY COURT CLERK: Thank you. Please be seated.

21

22

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24

Ladies and gentlemen of the jury, please listen to your verdict as it stands recorded. With respect to Count One of indictment, S2 07 Crim. 541 (RPP), how could you find the defendant Daniel B Karron? You answered guilty.

25

(Jury polled; each juror answered in the affirmative)

86B7KAR4

Verdict

1 THE COURT: Well, ladies and gentlemen, I never
2 comment on a verdict, and I do like to comment, however, on
3 jury service. And as I told the alternates, one of my duties
4 is to watch the jury, keep an eye on them, make sure that no
5 one is falling asleep. I had a few questions about Juror 3 at
6 one point, but I noticed that although she sat back in her
7 chair she kept her eyes open and was fully aware of what was
8 going on. But that's what my job is in part.

9 So one of the problems is, and one of the reasons I
10 don't comment upon verdicts is because I other duties that I
11 have to think about, whether under the law of evidence the
12 question is appropriate, and there are a number of rules in the
13 law of evidence that apply, how the questions is framed and
14 whether it's an appropriate question, whether it's relevant,
15 what have you. So I have other things to do besides listening
16 to the actual testimony and watching the jurors and what have
17 you.

18 But what I really want to mention is how important
19 jury service is in this country. In most countries in Europe
20 there are no juries. The only country that has juries is Great
21 Britain, Australia and some in Canada, and even there in most
22 cases they have done away with juries. It is an expenditure,
23 and it requires a lot more time to have a jury trial than it
24 does to have a nonjury trial.

25 In this country almost all the trials are jury trials.

86B7KAR4

Verdict

1 Now, why is that important? Well, some years ago, before
2 Hungary came out from behind the iron curtain, I went with a
3 number of other judges and lawyers to Hungary, and we were
4 invited there to discuss their new constitution, and I don't
5 know that we added much. I found in fact that the people in
6 Hungary that we were talking to were very intelligent people
7 and not only knew all about how our Constitution worked but
8 they also knew how all the other Constitutions in the world
9 worked. And there are a lot of Constitutions in the world
10 actually, and a lot of them have traditions that are very
11 similar to ours, and in fact Russia has a Constitution and it
12 provided for a lot of the things that are provided for in our
13 Constitution. The only problem was who decided whether those
14 rights applied. The state had the sole determination. There
15 was no right by the people to bring suits in the courts
16 challenging the state.

17 In any event, what I found was that there was great
18 dissatisfaction of the system of justice in Hungary, and the
19 reason was this: Judges decided everything. Judges were
20 trained at the university to become judges, and when they got
21 out of university they became junior judges, and then they
22 moved up and became more senior judges. It was a profession
23 just as if you were a doctor you became a judge. And you
24 became a judge if you were a member of the Communist party.
25 And if you didn't, and if you weren't a member of the Communist

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Verdict

1 party, these people felt you didn't get a fair shake in court,
2 whether it be a civil or criminal case. And here in this
3 country it's true judges are appointed by the President in the
4 case of federal judges, and they are elected to some posts in
5 the state courts, but they are also appointed judges in the
6 state courts, and it's true that that means there is a certain
7 amount of political input. And I happen to think that's
8 overstated. In other words, I don't think people do decide --
9 certainly district court judges I am convinced don't decide
10 cases because they came from some political party. I mean we
11 are appointed by some president, one or another, but there are
12 stories in the paper and on television, on your talk shows,
13 wondering who appointed that judge, well, he is going to decide
14 such and such. Well, if we didn't have jurors, they would be
15 saying that about the cases that come up for trial, and what
16 confidence would the public have in the fairness of the
17 procedure? If they believe that politics decided the lawsuits
18 in the courts, they would, or that would be the talk.

19 So, what does the jury system do? Well, you saw
20 Mr. Monteguedo here pull the names out of the hat, call them.
21 No one knows anything about your political background. No one
22 can challenge that you are independent determiners of the
23 facts. And that's the great thing about jury service, it's the
24 validation of our criminal justice system in our country. It
25 doesn't mean you have to agree with every decision a jury

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Verdict

1 reaches throughout the country. But remember when you are
2 criticizing them, if you do criticize them, that they heard the
3 evidence, you didn't. Nor did the reporters report all the
4 evidence. They saw the witnesses that testified, reporters
5 come in and out of the courtroom and come and go. They don't
6 hear everything. So, you don't always get -- it may be that
7 you don't always get a fair shake in the press.

8 I haven't tried a case with television, but I recently
9 had a case before me, still before me -- I haven't decided it
10 yet, but it had a lot of notoriety and you should read what the
11 papers in England said that I did and said and what have you.
12 You couldn't believe it. At least I couldn't believe it.

13 All I'm saying is you the jury are the great
14 validators of our system of justice. That's what is so
15 important about jury service, because each one of you when you
16 serve are an independent person reviewing the facts and the
17 evidence. It's much better than having a judge be in that
18 position, because it makes it clear that things aren't decided
19 on politics.

20 So I want to thank you for your service, and I am
21 sorry to hold you to listen to me talk. And I guess I will
22 tell you the third great lie, and that is that your checks are
23 in the mail. So you are discharged with my thanks and the
24 thanks of the court.

25 (Jury excused)

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Verdict

1 THE COURT: I guess I better look at a sentencing
2 date. September 11? I better wait for Mr. Monteguedo to tell
3 me. It takes more than 90 days, doesn't it?

4 MR. KWOK: I'm not sure.

5 THE COURT: October 14th or 15th? I don't know what
6 the holidays are. Mr. Rubinstein?

7 MR. RUBINSTEIN: Neither do I, Judge. Any day is OK.

8 MR. KWOK: Same for the government.

9 THE COURT: Do any of you know about the religious
10 holidays on that period?

11 Apparently Yom Kippur is the 14th or the 15th of
12 October, so that may be a bad time.

13 Why don't I put it down for September 11th, and if
14 it's an inconvenient date, we will adjourn it to an appropriate
15 date.

16 MR. RUBINSTEIN: Thank you, your Honor.

17 MR. KWOK: Thank you, your Honor.

18 THE COURT: All right.

19 MR. KWOK: Your Honor, the government does have an
20 application to make. We would move to modify the bail
21 conditions of the defendant.

22 THE COURT: Well, you will have to remind me what they
23 are.

24 MR. KWOK: I believe at the time the defendant was
25 first arraigned he was released on \$50,000 personal

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Verdict

1 recognizance bond, cosigned by two people that the government
2 approved, and he did surrender his passport, and he was ordered
3 to make no applications, and his travel restrictions were
4 limited to the District of Columbia, Philadelphia, the District
5 of Connecticut and the Southern District of New York.

6 It's the government's position that the defendant
7 poses a flight risk. We understand the defendant was a
8 professor. He was unemployed for a number of years before he
9 got the grant. Now that he is convicted I don't believe that
10 any federal agency will award him a grant. He has recently
11 sold his condominium in New York. We are not aware of any
12 strong family ties the defendant has in New York, and as
13 defense counsel pointed out in his summation the defendant also
14 has ties in Canada. And so for all of those reasons I think
15 that --

16 THE COURT: Well, that was just a vacation, right?
17 Canada? He didn't have any ties in Canada, did he?

18 MR. RUBINSTEIN: It's where he had the operation, in
19 Canada.

20 THE COURT: Oh, I see. I didn't even know that the
21 operation --

22 MR. RUBINSTEIN: Well, I didn't think it was
23 appropriate to state that in summation.

24 THE COURT: I'm not suggesting. I just didn't -- I
25 thought Canada was a vacation.

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Verdict

1 MR. RUBINSTEIN: He doesn't have any ties to Canada,
2 your Honor; it's just a lot cheaper in Canada than it is in the
3 United States.

4 THE COURT: What about postoperative care?

5 MR. RUBINSTEIN: That was in 2003, your Honor.

6 THE COURT: That doesn't require him to go back for
7 medical reasons?

8 MR. RUBINSTEIN: No, your Honor. 2003.

9 THE COURT: OK. I just don't know anything about the
10 whole area.

11 MR. KWOK: In any event, your Honor, for all of those
12 reasons, and because of our calculation --

13 THE COURT: You want to limit Canada? I don't think
14 Mr. Rubinstein -- Mr. Rubinstein says it doesn't matter,
15 Canada, right?

16 MR. RUBINSTEIN: Right.

17 THE COURT: So, what else am I supposed to restrict
18 it? What restrictions are you asking for?

19 MR. KWOK: I'm asking for a more stringent set of bail
20 conditions than were originally set forth.

21 THE COURT: Well, I'm asking you what ones you're
22 asking for.

23 MR. KWOK: I propose at the very least an electronic
24 monitor, strict regular pretrial supervision.

25 THE COURT: What kind of monitoring?

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Verdict

1 MR. KWOK: Electronic monitoring.

2 THE COURT: Mr. Rubinstein?

3 MR. RUBINSTEIN: Your Honor, we are talking about a
4 defendant who has an aging, sick mother who was in the hospital
5 as recently as a month ago on a respirator.

6 THE COURT: Where does she live?

7 MR. RUBINSTEIN: She lives in Long Beach, your Honor.

8 THE COURT: Long Beach, California?

9 MR. RUBINSTEIN: Long Beach, New York, your Honor.

10 And his brother was in court the other day. He has a brother.
11 He has a daughter who goes to school in upstate New York. And
12 he stayed for this trial. I don't see any reason that the
13 government should want to restrict him. He is not going
14 anywhere. He doesn't have a passport, and there is no place
15 for him to go. So, I would ask your Honor to continue him on
16 the bail conditions that have been previously set.

17 THE COURT: Well, he has a mother in Long Beach and a
18 brother in where?

19 MR. RUBINSTEIN: New Jersey.

20 THE COURT: New Jersey?

21 MR. RUBINSTEIN: Actually she has a home at the
22 moment. She is in a nursing home in Staten Island, his mother.

23 THE COURT: Is that the entire family?

24 MR. RUBINSTEIN: He has a sister in New Jersey.

25 THE COURT: Another sister in New Jersey?

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Verdict

1 MR. RUBINSTEIN: He has another brother in New Palls.

2 THE COURT: Well, there are some family ties,
3 Mr. Kwok. I can see why you would limit other areas, but
4 geographical limits, what reason would there be, other than
5 the -- I don't even know what the sentence would be here.

6 MR. KWOK: I think based on the very rough
7 calculation, I think the defendant would be at offense level
8 20, a Criminal History Category I. Think he is facing a
9 guidelines range of somewhere in the 30s.

10 THE COURT: And what monetary -- what monetary -- is
11 it based on 2B1.1?

12 MR. KWOK: It's based on 2B1.1.

13 THE COURT: All right. What figure are you using for
14 loss?

15 MR. KWOK: I'm using the figure as presented to the
16 jury, about half a million dollars of loss.

17 THE COURT: Well, I don't think you will be able to
18 show that.

19 So it's a base level of --

20 MR. KWOK: -- of six, your Honor.

21 THE COURT: -- of six. And do you have any reason to
22 believe -- what reason have you got to believe that he would
23 flee?

24 MR. KWOK: Well, because of the likely sentence that
25 he is facing, because of the lack of any real assets that the

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Verdict

1 defendant has at this time. He doesn't have a job as far as we
2 know, and he is not likely to be able to get an award of
3 another federal grant in light of his conviction.

4 THE COURT: But most people don't look for federal
5 grants. That's a small percentage of the opportunities that
6 would be available to him.

7 MR. RUBINSTEIN: He has been offered a position at
8 Rensselaer College, so I don't know if it's possible for him to
9 take it. So he is more than employable. He is a very
10 respected person.

11 THE COURT: Rensselaer Polytechnic Institute?

12 MR. RUBINSTEIN: Yes, your Honor.

13 THE COURT: Near Albany.

14 MR. KWOK: I was going to say, your Honor, I can't
15 speak for my colleagues in the civil division, but I think they
16 are contemplating filing a civil complaint to get treble
17 damages based on the amount we showed the government was at
18 loss for.

19 THE COURT: Treble damages under what statute?

20 MR. KWOK: I don't know.

21 THE COURT: It's not an antitrust case.

22 MR. KWOK: I don't know the name of the statute, but
23 if your Honor recalls, there was a civil assistant who appeared
24 before your Honor a while back while we had a status
25 conference.

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Verdict

1 THE COURT: I don't recall that.

2 MR. KWOK: He might be able to --

3 THE COURT: That doesn't mean anything.

4 MR. KWOK: He might be able to --

5 THE COURT: I have had a lot of conferences.

6 MR. RUBINSTEIN: That makes two of us. I don't recall
7 it either. Maybe it's a senior thing.

8 MR. KWOK: In any event, my only point is that the
9 defendant, in addition to whatever custodial sentence your
10 Honor may impose, is also likely going to face a huge monetary
11 judgment.

12 THE COURT: Then what you have is a bankruptcy and he
13 starts over. They can do what they want.

14 I don't see the grounds for putting a monitor on him.
15 He has shown up here to court every time, a little late
16 sometimes, but he's been here at the trial.

17 I can understand why you don't want him to go to -- he
18 has surrendered his passport documents -- and you don't want
19 him to go to Canada. You can restrict that. But why shouldn't
20 he be able to go to New York, New Jersey and Connecticut?

21 MR. KWOK: I don't think he would be precluded
22 necessarily from going to those places if he is placed on
23 regular supervision. He just needs to be in touch with his
24 pretrial services officer as to his whereabouts.

25 THE COURT: I do think he ought to be under pretrial

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Verdict

1 services supervision. I agree with that.

2 He hasn't been under pretrial services supervision, I
3 gather.

4 MR. KWOK: I do not believe he was.

5 MR. RUBINSTEIN: No, your Honor.

6 THE COURT: Well, I think that he should be under
7 pretrial services supervision. And what are the regular terms
8 of pretrial services supervision?

9 MR. KWOK: I can't remember an exact time frame. As I
10 understand it, often times it's up to the discretion of the
11 pretrial services officer as to what he or she deems necessary.
12 But there is a regular reporting requirement.

13 THE COURT: Once a week? All right. So let them know
14 and advise the pretrial services officer of any travel he
15 intends to make so that the pretrial services office can be --

16 MR. RUBINSTEIN: Excuse me?

17 THE COURT: If the pretrial officer has any concern
18 about travel, he can ask the clerk for my permission.

19 MR. RUBINSTEIN: Thank you, your Honor.

20 MR. KWOK: Thank you, your Honor.

21 THE COURT: All right.

22 MR. RUBINSTEIN: So, should he go tomorrow to pretrial
23 services?

24 THE COURT: Yes, sir. All right.

25 MR. RUBINSTEIN: Thank you, your Honor.

1 MR. KWOK: Thank you, your Honor.

2 MR. EVERDELL: Thank you.

3 MR. RUBINSTEIN: Have a good day, sir.

4 THE COURT: Anything else?

5 MR. RUBINSTEIN: Good night, your Honor.

6 THE COURT: All right. Good night.

7 * * *

